

Business Associate Agreement

This Business Associates Agreement (“Agreement”) is entered into this

_____ day of _____, 20__ (the “Effective Date”)

by and between _____

with a business address at _____

(hereinafter “Customer”) and MedActionPlan.com, LLC with a business address at 87 Main Street, 3rd Floor, Peapack, New Jersey 07977 (hereinafter “Business Associate”).

RECITALS

WHEREAS, Business Associate now and in the future may have relationships with Customer in which Business Associate creates or receives Protected Health Information (as defined below) for use in providing services or products to Customer.

WHEREAS, Business Associate and Customer (each a “Party” and collectively the “Parties”) desire to meet their obligations, to the extent applicable, under the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Regulation”) published by the U.S. Department of Health and Human Services (“HHS”) at 45 C.F.R. parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which individually identifiable health information that is protected under HIPAA (“Protected Health Information”) and that is provided by, or created or received by, the Business Associate on behalf of the Customer, will be handled between themselves.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Services. Business Associate is an application services provider who makes available to Customer a certain computer application known as the Visual Med Scheduler™

that may involve the use and/or disclosure of Protected Health Information. This application is made available to Customer pursuant to the Visual Med Scheduler user agreement (the "User Agreement") that specifies the terms and conditions upon which the Customer may use the application. Except as otherwise specified herein, the Business Associate may make any and all uses and disclosures of Protected Health Information created or received from or on behalf of Customer necessary to perform its obligations under the User Agreement.

1.2. Public Health Activities. Business Associate may use, analyze, and disclose the Protected Health Information in its possession for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b)

1.3. Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may: (a) consistent with 45 C.F.R. § 164.504(e)(4), use and disclose the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate; and

(b) de-identify any and all Protected Health Information in accordance with 45 C.F.R. § 164.514(b). Customer acknowledges and agrees that de-identified information is not Protected Health Information and that Business Associate may use such de-identified information for any lawful purpose.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

2.1. Responsibilities of the Business Associate. Business Associate agrees to: (a) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law;

(b) report to the Customer any use and/or disclosure of the Protected Health Information of which Business Associate becomes aware that is not permitted or required by this Agreement;

(c) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate not provided for by this Agreement;

(d) establish and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information and prevent use or disclosure of Protected Health Information other than as permitted or required by this Agreement;

(e) require all of its subcontractors and agents that receive, use or have access to Protected Health Information, to agree to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Business Associate and agree to implement administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of Protected Health Information;

(f) make available its internal practices, books and records relating to the use and/or disclosure of Protected Health Information to the Secretary of HHS for purposes of determining the Customers compliance with the Privacy Regulation;

(g) within thirty (30) days of receiving a written request from Customer, make available information necessary for Customer to make an accounting of disclosures of an individual's Protected Health Information;

(h) within fifteen (15) days of receiving a written request from Customer, make available Protected Health Information necessary for Customer to respond to individuals requests for access to Protected Health Information about them, to the extent that the Protected Health Information in Business Associates possession constitutes a Designated Record Set; and

(i) within thirty (30) days of receiving a written request from Customer, incorporate any amendments or corrections to the Protected Health Information in accordance with the Privacy Regulation, to the extent that the Protected Health Information in Business Associates possession constitutes a Designated Record Set;

(j) Business Associate will report any security incident of which it becomes aware to Client. For purposes of this agreement, a "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate.

2.2. Responsibilities of the Customer. (a) With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Customer agrees: (i) to obtain any consent, authorization or permission that may be required by the Privacy Regulation or any other applicable federal, state or local laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to an individual; and (ii) that it will not furnish Business Associate Protected Health Information that is subject to any arrangements permitted or required of the Customer as a Covered Entity within the meaning of HIPAA, including but not limited to, arrangements agreed to by Customer under 45 C.F.R. § 164.522 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under this Agreement and the User Agreement.

(b) Customer represents and warrants that its notice of privacy practices permits Customer to use and disclose Protected Health Information in the manner that the Business Associate is authorized to use and disclose Protected Health Information under this Agreement.

3. TERM AND TERMINATION

3.1. **Term.** Each term and condition of this Agreement shall become effective on the Effective Date. This Agreement shall continue in effect unless terminated as provided in this Section 3, provided, that certain provisions and requirements of this Agreement shall survive the expiration or termination of this Agreement in accordance with Section 4.4 herein.

3.2. **Termination by the Customer.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Customer may immediately terminate this Agreement if the Customer makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, Customer may choose to provide the Business Associate written notice of the breach in sufficient detail to enable the Business Associate to understand the specific nature of the breach and afford Business Associate an opportunity to cure the breach; provided, however, that if the Business Associate fails to cure the breach within a reasonable time specified by Customer, Customer may terminate this Agreement and the related User Agreement to the extent that the User Agreement requires such Business Associate to create or receive Protected Health Information.

3.3. **Termination by Business Associate.** The Business Associate may immediately terminate this Agreement if such Business Associate makes the determination that Customer has breached a material term of this Agreement. Alternatively, the Business Associate may choose to provide Customer written notice of the breach in sufficient detail to enable Customer to understand the specific nature of the breach and afford Customer an opportunity to cure the breach; provided, however, that if Customer fails to cure the breach within a reasonable time specified by the Business Associate, the Business Associate may terminate this Agreement and any related User Agreement to the extent that the User Agreement requires such Business Associate to create or receive Protected Health Information.

3.4. **Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the User Agreement between Customer and the Business Associate.

3.5. **Effect of Termination.** Upon the termination of this Agreement, the Business Associate agrees to return or destroy all Protected Health Information, including such information in possession of the Business Associate's subcontractors, if it is feasible to do so. If return or destruction of said Protected Health Information is not feasible, such

Business Associate will extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

4. MISCELLANEOUS

4.1. Entire Agreement. This Agreement, and all attachments, schedules and exhibits hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous written or oral memoranda, negotiations, arrangements, contracts or understandings of any nature or kind between the Parties with respect to the subject matter hereof.

4.2. Change of Law. Customer shall notify Business Associate within ninety (90) days of any amendment to any provision of HIPAA, or its implementing regulations set forth at 45 C.F.R. parts 160 through 164, which materially alters either Party's or the Parties' obligations under this Agreement. The Parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this Agreement to give effect to such revised obligations; provided, however, that if the Parties are unable to agree on mutually acceptable amendment(s) within ninety (90) days of the relevant change of law, either Party may terminate this Agreement consistent with sections 3.5 and 3.4.

4.3. Construction of Terms. The terms of this Agreement shall be construed in light of any interpretation and/or guidance on HIPAA, the Privacy Regulation issued by HHS from time to time.

4.4. Survival. Sections 3.5, 4.3, 4.8, 4.11, 5, 6 and this Section 4.4, and any other provisions of this Agreement that by their terms are intended to survive, shall survive the termination of this Agreement.

4.5. Amendment; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

4.6. Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above, and/or via facsimile to the facsimile telephone numbers listed above. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

4.7. Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

4.8. Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

4.9 Binding Agreement;

This Agreement shall be binding upon the Parties and their successors and permitted assigns.

4.10 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

4.11 Contradictory Terms. This Agreement hereby amends, modifies, supplements and is made part of the User Agreement, provided that any provision of the User Agreement (including all exhibits or other attachments thereto and all documents incorporated therein by reference, that is directly contradictory to one or more terms of this Agreement (“Contradictory Term”) shall be superseded by the terms of this Agreement as of the date such terms become effective pursuant to Section 3.1, to the extent and only to the extent of the contradiction and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

5. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

6. DEFINITIONS

Regulatory citations in this Agreement are to the United States Code of Federal Regulations Title 45 parts 160 through 164, as interpreted and amended from time to time by HHS, for so long as such regulations are in effect. Unless otherwise specified in this Agreement, all capitalized terms not otherwise defined shall have the meaning established for purposes of Title 45 parts 160 through 164 of the United States Code of Federal Regulations, as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed effective as of the Effective Date.

“BUSINESS ASSOCIATE”
MedActionPlan.com, LLC.

CUSTOMER
Customer Name: _____

By: _____ By: _____

Print Name: _____ Print Name: _____

Print Title: _____ Print Title: _____

Date: _____ Date: _____