

Consortium of Independent Physician Associations, Inc. ("CIPA")



Private Equity Services

- CIPA Services & Fees.** MAG shall perform the services (the "Services") described in the Proposal for Data Integration Project (the "Proposal") for Client in return for the applicable fees, charges and expenses set forth in the Proposal.
- Conflicting Terms.** Where there is a conflict between these General Contract Terms and Conditions ("General T&C") and the terms of the Proposal, the General T&C shall be controlling unless expressly stated in writing with the Proposal to control.
- Term and Termination.** This Agreement may be terminated by either party at any time without cause by providing the other party with (180) one hundred and eighty days' prior written notice. This Agreement may be terminated for cause by either party effective immediately upon written notice upon the occurrence of any of the following events: (1) either party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under bankruptcy or insolvency law or ceases to do business for any reason; or (2) where either party breaches a material obligation under the Agreement, and fails to cure the breach to the reasonable satisfaction of the non-breaching party within (15) fifteen calendar days after receiving written notice thereof from the other party.
- HIPAA Compliance – Business Associate Agreement.** Client is either a "Business Associate" of one or more Covered Entities or is a "Covered Entity" and is required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its privacy and security standards, as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and its implementing regulations ("HITECH") including modifications to the HIPAA privacy, security, enforcement and breach notification rules under HITECH. To the extent that Client is a Business Associate of one or more Covered Entities, CIPA acknowledges that it is a subcontractor of Client and pursuant to HITECH is also considered to be a Business Associate to those Covered Entities, and to the extent that Client is a Covered Entity, CIPA acknowledges that as a subcontractor exposed to Protected Healthcare Information on behalf of Client, CIPA is a Business Associate of Client. Accordingly, CIPA hereby agrees that it will maintain the confidentiality of any Protected Health Information disclosed by Client or CIPA in compliance with the terms of HIPAA and HITECH.
- Confidential Information.** Neither party shall use, exploit, disclose or make known to any person or business entity, any information directly or indirectly received or acquired by the other party pursuant to the relationship created by the Agreement, including, without limitation, information relating to business affairs, data, designs, manuals, training materials and documentation, formulas, ideas, inventions, knowledge of manufacturing processes, methods, prices, financial and accounting data, timekeeping data, products and product specifications, systems and technical information of the other party ("Confidential Information"). Notwithstanding the foregoing provision, the Client and CIPA shall each be permitted to disclose Confidential Information of the other party to its own employees, accountants, attorneys, and other agents and its affiliates or subsidiaries to the extent the disclosure is reasonably necessary for the performance of its duties and obligations or the enjoyment of its rights under this Agreement; provided, however, that Client and CIPA shall be responsible for any violation of the confidentiality obligations set forth in the Agreement by any permitted third parties to which it provides Confidential Information.
- Ownership of Intellectual Property.** As between the parties, Client shall own and retain all rights to Client's confidential data. This Agreement does not grant CIPA any ownership rights to Client's confidential data. Client grants permission to CIPA to use the Client's confidential data only as necessary to provide the Service and consulting services to Client contemplated under the Agreement. All rights, title, and interest in the materials, programs, inventions, discoveries, improvements, software, systems, methods techniques and research (the "Intellectual Property") developed by CIPA and used in connection with the provision of Services by CIPA under this Agreement shall be the sole and exclusive property of CIPA and Client shall have no ownership interest in the Intellectual Property.
- Indemnification.** Each party hereby agrees to indemnify, defend and hold the other harmless from any loss, liability, costs or damages from actual or threatened claims or causes of action that arose from this Agreement and are caused by the gross negligence or intentional misconduct of such party or its respective officers, directors, employees, agents, contractors, members or participants (as applicable), provided that with respect to officers, directors, employees, and agents, such individuals are acting within the scope of their employment or agency, as applicable.
- Warranty.** Client's sole and exclusive remedy with respect to any warranty under this Agreement will be, at the sole option of CIPA, to either (a) use its reasonable commercial efforts to re-perform any Services not in substantial compliance with the terms of this Agreement, or (b) refund amounts paid by Client related to the portion of the Services not in substantial compliance with the terms of the Agreement; provided, in each case, Client notifies CIPA in writing within five (5) business days after performance of the applicable Services.
- Limitation of Liability and Damages.** Except for damages arising in connection with the foregoing indemnification provision [and warranty], neither party shall have liability to the other with respect to their obligations under this Agreement (i) for special, consequential, exemplary, incidental, or punitive damages (including, but not limited to, lost profits, lost revenues, lost business opportunities), regardless of the legal theory under which they are sought, and even if they had been advised of, or should have foreseen, the possibility of such damages or (ii) for amounts exceeding the total value of the Services under which such damages arose.
- Limitation on Actions.** No action, regardless of form, relating to this Agreement, may be brought by either party more than (1) one year after the cause of action has accrued, except that an action for non-payment may be brought in accordance with applicable law.
- General Contract Terms.** This Agreement any other documents incorporated herein by reference and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to the Agreement with respect to the subject matter contained therein and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is for the sole benefit of the parties hereto and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. All terms and conditions of this Agreement, which by their nature are intended to survive termination or expiration of this Agreement, shall so survive termination or expiration of this Agreement.
 - If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision. The Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party. The Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.
 - Any notice permitted or required under the Agreement shall be in writing and shall be deemed to have been duly given by personal delivery upon such delivery, upon receipt of telecopy or facsimile with proof of transmission, on the first business day following delivery by overnight courier, or on the second business day following deposit in the United States Mail, certified or registered, return receipt requested, postage prepaid and addressed as set forth on the signature page of the Agreement unless subsequently changed in writing by either party on their own behalf. In the event that any party institutes any legal suit, action or proceeding, including arbitration, against the other party to enforce the covenants contained in the Agreement (or obtain any other remedy in respect of any breach of this Agreement) arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs. This Agreement shall be governed and construed in accordance with the laws of the State of Michigan, and all disputes that may arise under this Agreement shall be submitted to the state and Federal courts located, respectively, in Ingham County, Michigan and Lansing, Michigan, which shall have jurisdiction and venue over matters arising under this Agreement.
 - Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement.
- Signatures and Authority.** The Agreement may be executed by exchange of signature pages by facsimile and/or or other electronic signature in a manner agreed upon by the parties hereto and/or in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. The individuals executing the Agreement for the respective parties represent that they have full power and authority to enter into the Agreement and that it is binding.