

## **BizMed End User License Agreement**

**Date Last Revised:** October 26, 2013

This Agreement sets forth the terms and conditions that apply to your access and use of the Internet Web site located at [www.bizmedtoolbox.com](http://www.bizmedtoolbox.com) ("the BizMed Toolbox"), as owned and operated by EHR Pathway LLC (dba BizMed), a Missouri Limited Liability Company, on behalf of those of its direct or indirect subsidiaries and/or affiliates, (collectively referred to as "BizMed"). By using the BizMed Toolbox you agree to be bound by the terms and conditions of this Agreement and BizMed's Privacy and Security Policy, as they may be amended from time to time in the future (see "Modifications" below).

### **1. Accepting the Terms**

This is a legally binding Agreement between BizMed, a Missouri Limited Liability Company ("we" or "us") and you, as a "User" of our on-line information, tools, features and functionality provided through the BizMed Toolbox (together the "Service"). By clicking the "Sign Up" or through the continued use of the Service, you agree to be bound by this Agreement. Please read this agreement carefully, and do not click "Sign up" or continue use of the Service unless you agree fully with its terms.

You may not use the Service and you may not accept this Agreement if you are not of a legal age to form a binding contract with BizMed.

If you accept this Agreement, you represent that you have the capacity to be bound by it or if you are acting on behalf of a company or entity that you have the authority to bind such entity. Before you continue, you should print or save a local copy of this Agreement for your records.

### **2. Privacy and your Personal Information**

For information about BizMed's data protection practices, please read BizMed's Privacy and Security Policy, which is hereby incorporated into this Agreement. This policy explains how BizMed treats your personal information when you access and use the Service. The policy may be updated from time to time at our discretion. Changes will be effective upon posting to the site.

### **3. Description of the Service**

The Service is a practice information and management service that allows users of the Service to consolidate, track and analyze aspects of their business. Based on such information, the Service may also present information relating to third party products or services ("Advertising Offers").

The Service is provided to you by BizMed without charge (it is free) and is meant as an aid to assist you in organizing and managing your practice. It is not intended to provide legal, tax or financial advice.

### **4. Advertising Offers and Third-Party Links**

Some parts of the Service are supported by sponsored links from advertisers and display Advertising Offers that may be custom matched to you based on information stored in the Service, queries made through the Service or other information. We will always disclose when a particular Advertising Offer is sponsored.

In connection with Advertising Offers, the Service will provide links to other web sites belonging to BizMed advertisers and other third parties. BizMed does not endorse, warrant or guarantee the products

or services available through the Advertising Offers (or any other third-party products or services advertised on or linked from our site), whether or not sponsored, and BizMed is not otherwise responsible for the activities or policies of those web sites.

## **6. Your Registration Information**

You agree and understand that you are responsible for maintaining the confidentiality of your password which, together with your User Name, allows you to access the Service. That User Name and password, together with any e-mail address or other contact information you provide form your “Registration Information.”

By providing us with your e-mail address, you agree to receive all required notices electronically, to that e-mail address. It is your responsibility to update or change that address, as appropriate. Notices will be provided in HTML (or, if your system does not support HTML, in plain-text) in the text of the e-mail or through a link to the appropriate page on our site, accessible through any standard, commercially available internet browser.

If you become aware of any unauthorized use of your Registration Information, you agree to notify BizMed immediately at the email address - [security@bizmedsolutions.com](mailto:security@bizmedsolutions.com).

## **7. Your Use of the Service**

Your right to access and use the BizMed Toolbox and the Service is personal to you and is not transferable by you to any other person or entity. You are only entitled to access and use the BizMed Toolbox for lawful purposes.

Accurate records enable BizMed to provide the Service to you. You must provide true, accurate, current and complete information about your practice, as requested in our “Settings” section of the Service, and you may not misrepresent your Registration Information. In order for the Service to function effectively, you must also keep your Registration Information up to date and accurate. If you do not do this, the accuracy and effectiveness of the Service to you will be affected.

Your access and use of the BizMed Toolbox may be interrupted from time to time for any of several reasons, including, without limitation, the malfunction of equipment, periodic updating, maintenance or repair of the BizMed Toolbox or other actions that BizMed, in its sole discretion, may elect to take.

## **8. Rights You Grant to Us**

By submitting information, data, registration information, other practice information, materials and other content to BizMed through the Service, you are licensing that content to BizMed solely for the purpose of providing the Service. BizMed may use and store the content, but only to provide the Service to you. By submitting this content to BizMed, you represent that you are entitled to submit it to BizMed for use for this purpose, without any obligation by BizMed to pay any fees or other limitations.

By using the Service, you expressly authorize BizMed to access your information maintained by identified third parties, on your behalf as your agent. When you use the submittal feature of the Service, you will be directly connected to the website for the third party you have identified. BizMed will submit information including usernames and passwords that you provide to log you into the site. You hereby authorize and permit BizMed to use and store information submitted by you to the Service (such as account passwords and user names) to accomplish the foregoing and to configure the Service so that it is compatible with the third party sites for which you submit your information. For purposes of this Agreement and solely to submit information and other materials as part of the Service, you appoint

BizMed as your agent, to access third party sites, submit and use your information with the full power and authority to do and perform each thing necessary in connection with such activities, as you could do in person. You acknowledge and agree that when BizMed is submitting information to third party sites, BizMed is acting as your agent, and not as the agent of or on behalf of the third party. You understand and agree that the Service is not sponsored or endorsed by any third parties accessible through the Service.

## **9. BizMed's Intellectual Property Rights**

The contents of the BizMed Toolbox, including its "look and feel" (e.g., text, graphics, images, logos and button icons), photographs, editorial content, notices, software (including html-based computer programs) and other material are protected under both United States and other applicable copyright, trademark and other laws. The contents of the BizMed Toolbox belong or are licensed to BizMed or its software or content suppliers. BizMed grants you the right to view and use the BizMed Toolbox subject to these terms. You may download or print a copy of information provided on the BizMed Toolbox for your personal, internal and non-commercial use only. Any distribution, reprint or electronic reproduction of any content from the BizMed Toolbox in whole or in part for any other purpose is expressly prohibited without our prior written consent.

## **10. Access and Interference**

You agree that you will not:

1. Use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology to access, acquire, copy or monitor the BizMed Toolbox or any portion of the BizMed Toolbox, without BizMed's express written consent, which may be withheld in BizMed's sole discretion;
2. Use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search the BizMed Toolbox, other than the search engines and search agents available through the Service and other than generally available third-party web browsers (such as Microsoft Explorer);
3. Knowingly post or transmit any file which contains viruses, worms, Trojan horses or any other contaminating or destructive features, or that otherwise interfere with the proper working of the BizMed Toolbox or the Service; or
4. Attempt to decipher, decompile, disassemble, or reverse-engineer any of the software comprising or in any way making up a part of the BizMed Toolbox or the Service.

## **11. Rules for Posting**

As part of the Service, BizMed allows Users to upload content to the BizMed Toolbox. You agree in uploading content to follow certain rules.

1. You are responsible for all content you submit to the BizMed Toolbox.
2. You may not submit, upload or transmit any individually identifiable health information to the BizMed Toolbox or any parts of the Service
3. By submitting content to us, you represent that you have all necessary rights and hereby grant us a non-exclusive license to access your submitted content through the BizMed Toolbox, and to use, prepare derivative works of, display and perform such operations as permitted through the functionality of the BizMed Toolbox and under this Agreement.
4. You may not submit or transmit any message which is libelous or defamatory, or which discloses private or personal matters concerning any person. You may not submit or transmit any message, data, image or program that is indecent, obscene, pornographic, harassing, threatening, abusive,

- hateful, racially or ethnically offensive; that encourages conduct that would be considered a criminal offense, give rise to civil liability or violate any law; or that is otherwise inappropriate.
5. You may not submit or transmit any message, data, image or program that would violate the property rights of others, including unauthorized copyrighted text, images or programs, trade secrets or other confidential proprietary information, and trademarks or service marks used in an infringing fashion.
  6. You may not interfere with other Users' use of the Service, including, without limitation, disrupting the normal flow of dialogue in an interactive area of the BizMed Toolbox, deleting or revising any content submitted by another person or entity, or taking any action that imposes a disproportionate burden on the Service infrastructure or that negatively affects the availability of the Service to others.
  7. You agree that any employment or other relationship you form or attempt to form with an employer, employee, or contractor whom you contact through areas of the BizMed Toolbox that may be designated for that purpose is between you and that employer, employee, or contractor alone, and not with us.
  8. You may not copy or use personal identifying or business contact information about other Users without their permission. Unsolicited e-mails, mailings, telephone calls, or other communications to individuals or companies whose contact details you obtain through the Service are prohibited.
  9. You agree that we may use any feedback, suggestions, or ideas you post in any way, including in future modifications of the Service, other products or services, advertising or marketing materials. You grant us a perpetual, worldwide, fully transferable, sublicensable, non-revocable, fully paid-up, royalty free license to use the feedback you provide to us in any way.

## **12. Disclaimer of Representations and Warranties**

THE CONTENT AND ALL SERVICES AND PRODUCTS ASSOCIATED WITH THE BIZMED TOOLBOX OR PROVIDED THROUGH THE SERVICE (WHETHER OR NOT SPONSORED) ARE PROVIDED TO YOU ON AN "AS-IS" AND "AS AVAILABLE" BASIS. BIZMED MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONTENT OR OPERATION OF THE BIZMED TOOLBOX OR OF THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK.

BIZMED MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY OR COMPLETENESS OF THE CONTENT ON THE BIZMED TOOLBOX OR OF THE SERVICE (WHETHER OR NOT SPONSORED), AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. BIZMED MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT THE CONTENT THAT MAY BE AVAILABLE THROUGH THE SERVICE IS FREE OF INFECTION FROM ANY VIRUSES OR OTHER CODE OR COMPUTER PROGRAMMING ROUTINES THAT CONTAIN CONTAMINATING OR DESTRUCTIVE PROPERTIES OR THAT ARE INTENDED TO DAMAGE, SURREPTITOUSLY INTERCEPT OR EXPROPRIATE ANY SYSTEM, DATA OR PERSONAL INFORMATION.

## **13. Not a Financial Advisor, Legal Advisor or Tax Advisor**

NEITHER BIZMED NOR THE SERVICE IS INTENDED TO PROVIDE LEGAL, TAX OR FINANCIAL ADVICE. BIZMED IS NOT A FINANCIAL ADVISOR, LEGAL ADVISOR OR TAX ADVISOR. The Service is intended only to assist you in decision-making and is broad in scope. Your personal financial situation is unique, and any information and advice obtained through the Service may not be appropriate for your situation. Accordingly, before making any final decisions or implementing any business strategy, you should consider obtaining additional information and advice from your accountant or other financial advisers who are fully aware of your individual circumstances.

## **14. Notifications Disclaimer**

You understand and agree that any notifications provided to you through the Service may be delayed or prevented by a variety of factors. BizMed does its best to provide notifications in a timely manner with accurate information. However, we neither guarantee the delivery nor the accuracy of the content of any notification. You also agree that BizMed shall not be liable for any delays, failure to deliver, or misdirected delivery of any notification; for any errors in the content of a notification; or for any actions taken or not taken by you or any third party in reliance on a notification.

## **15. Limitations on BizMed's Liability**

BIZMED SHALL IN NO EVENT BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, LIQUIDATED OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, REVENUE OR BUSINESS, ARISING IN WHOLE OR IN PART FROM YOUR ACCESS TO THE BIZMED TOOLBOX, YOUR USE OF THE SERVICE OR THIS AGREEMENT, EVEN IF BIZMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, BIZMED'S LIABILITY TO YOU FOR ANY CAUSE WHATEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO \$500.00 (FIVE HUNDRED UNITED STATES DOLLARS).

## **16. Your Indemnification of BizMed**

You shall defend, indemnify and hold harmless BizMed and its officers, directors, shareholders, and employees, from and against all claims and expenses, including but not limited to attorneys fees, in whole or in part arising out of or attributable to any breach of this Agreement by you.

## **17. Ending your relationship with BizMed**

This Agreement will continue to apply until terminated by either you or BizMed as set out below. If you want to terminate your legal agreement with BizMed, you may do so by closing your account for the Service.

Please use the directions below to cancel your account:

1. Login to your BizMed Toolbox account.
2. Locate the "Request help" link at the top right of any page.
3. Click on the "Request help" link.
4. Enter "Cancel Account" in Subject field.
5. Enter any optional text in Description field.
6. Press "Submit"
7. Your account will be closed and your ability to log in deactivated within 48 hours.

BizMed may at any time terminate its legal agreement with you:

- a. if you have breached any provision of this Agreement (or have acted in a manner which clearly shows that you do not intend to, or are unable to comply with the provisions of this Agreement);
- b. if BizMed in its sole discretion believes it is required to do so by law (for example, where the provision of the Service to you is, or becomes, unlawful); or

- c. immediately upon notice, to the e-mail address provided by you as part of your Registration Information.

## **18. Modifications**

BizMed may modify this Agreement from time to time. Any and all changes to this Agreement will be posted on the BizMed Toolbox site. In addition, the Agreement will always indicate the date it was last revised. You are deemed to accept and agree to be bound by any changes to the Agreement when you use the Service after those changes are posted.

## **19. Governing Law and Forum for Disputes**

This Agreement, and your relationship with BizMed under this Agreement, shall be governed by the laws of the State of Missouri without regard to its conflict or choice of laws provisions. Any dispute with BizMed, or its officers, directors, employees, agents or affiliates, arising under or in relation to this Agreement shall be resolved exclusively through the small-claims court of the Superior Court of Missouri within the county of Saint Louis, Missouri, except with respect to imminent harm requiring temporary or preliminary injunctive relief in which case BizMed may seek such relief in any court with jurisdiction over the parties. You understand that, in return for agreement to this provision, BizMed is able to offer the Service at the terms designated, without charge to you, and that your assent to this provision is an indispensable consideration to this Agreement.

You also acknowledge and understand that, with respect to any dispute with BizMed, its officers, directors, employees, agents or affiliates, arising out of or relating to your use of the Service or this Agreement:

- YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY; and
- YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING ANY SUCH DISPUTE.

## **20. Miscellaneous**

If any portion of this Agreement is deemed unlawful, void or unenforceable by any arbitrator or court of competent jurisdiction, this Agreement as a whole shall not be deemed unlawful, void or unenforceable, but only that portion of this Agreement that is unlawful, void or unenforceable shall be stricken from this Agreement.

You agree that if BizMed does not exercise or enforce any legal right or remedy which is contained in the Agreement (or which BizMed has the benefit of under any applicable law), this will not be taken to be a formal waiver of BizMed's rights and that those rights or remedies will still be available to BizMed.

All covenants, agreements, representations and warranties made in this Agreement shall survive your acceptance of this Agreement and the termination of this Agreement.

This Agreement represents the entire understanding and agreement between you and BizMed regarding the subject matter of the same, and supersedes all other previous agreements.