

# Ivertex Application Service Provider Agreement

## IMPORTANT - READ CAREFULLY

THIS APPLICATION SERVICE PROVIDER AGREEMENT (“AGREEMENT”) IS BETWEEN YOU (THE “CUSTOMER”) AND IVERTEXO INTERNET SOLUTIONS, INC. DBA IVERTEX (“IVERTEX”) FOR USE OF SOLACE EMC ENTERPRISE EDITION HOSTED BY IVERTEX (THE “ASP SERVICE”). BY DOWNLOADING OR INSTALLING ANY IVERTEX SOFTWARE OR BY USING THE ASP SERVICE, CUSTOMER AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT ACCEPT THESE TERMS, CUSTOMER MUST DISCONTINUE USE OF THE ASP SERVICE AND NOTIFY IVERTEX IMMEDIATELY OF ITS INTENT TO TERMINATE THIS AGREEMENT.

## 1 SERVICE and FEES

### 1.1 Use

Subject to the terms and conditions of this Agreement, Ivertex grants to Customer a limited, non-exclusive, and non-transferable right, for the term of this Agreement, to use the ASP Service for the number of users for which the corresponding fee has been paid. Customer agrees to safeguard the security access codes issued by Ivertex for use of the ASP Service to ensure that only authorized personnel have access to the ASP Service. Hardware and connectivity to the Internet is the responsibility of the Customer. Third-party networking or dial-up services not provided by Ivertex are not covered in any way by this Agreement.

### 1.2 ASP Service

(a) Ivertex hosts the ASP Services to enable Customer to conduct electronic business with other companies (the “Trading Partners”) including healthcare insurance payers and clearinghouses. Ivertex communicates with Customer’s Trading Partners using Electronic Data Interchange (EDI) formats and communications protocols. The electronic services provided by the ASP Service are commonly referred to in the industry as “Service bureau”, “billing agent”, or “clearinghouse” services, and include but are not limited to: (i) delivery, processing, and management of electronic health insurance claims and other HIPAA-related electronic transactions to Customer’s Trading Partners, (ii) automatic translation and manual entry of data to form the electronic transactions, and (iii) delivery, processing, and management of non-standard files and reports related to the electronic transactions.

(b) Ivertex agrees to forward all claims in a timely manner (within 5 minutes normally, but allowing for up to two (2) business days of receipt of claims). Edits will be applied to each claim based upon the published edit documentation of the appropriate clearinghouse and payer. If the claim passes the edits, it will be submitted electronically to the appropriate Trading Partner. Ivertex may make format changes in the information received from Customer. Ivertex reserves the right to modify the claim submissions, as required or requested by the Trading Partner, into the required HIPAA transaction and code sets format as mandated by 45 CFR 162, subpart K through R. Submitted claim data that does not comply with the Trading Partners published documentation may not be forwarded. Ivertex will make no other changes to claim information received from Customer without disclosing it in this Agreement in Article 1.3 Data Limitation Disclosures, or upon receiving prior written consent of Customer.

(c) Customer acknowledges with respect to the ASP Service, that (i) the Trading Partner submitted to will reject any claim which fails to satisfy that the Trading Partner's then current standard edits, either undocumented or published in the Trading Partner's relevant technical specifications, and (ii) each Trading Partner has the right to reject any claim that fails to meet claims administration criteria then ordinarily employed by that entity. Customer acknowledges that it is the Customer's responsibility to review responses and reports from Ivertex and/or a Trading Partner to determine the status of a submitted claim. Customer acknowledges that it is Customer's responsibility to repair and resubmit claims, and to comply with filing deadlines. Customer authorizes Ivertex to transmit professional (HCFA-1500) and/or institutional (UB92) claim transactions and act as a "billing agent" and a "business associate" on Customer's behalf. Customer shall make no representations or warranties to any other entity with respect to the ASP Service.

### **1.3 Data Limitation Disclosures**

The following disclosures apply to every claim processed using the ASP Service:

(a) Claims are in U.S. dollars only, meaning indirectly that Customer may only the ASP Service to submit to U.S. payers.

(b) The ASP Service imports data and makes a copy of the data separate from any other system Customer may be using. Changing data in Customer's other systems will not affect the ASP Service's copy of the data, unless Customer re-imports the data and deletes the records that were first imported. Customer or its billing personnel are responsible for ensuring that the data being transmitted with the ASP Service is the most current and accurate copy of Customer's data.

(c) Provider signature indicator is set on the SolAce Provider List and is used on all claims that are imported into the ASP Service. This cannot be changed on an individual claim basis.

(d) Patient signature is controlled by the Patient Signature Source field. A blank in this field indicates no signature, no assignment of benefits, and no authorization for release of information. Any other value which has the first letter being a valid HIPAA code (B, C, M, P, or S) indicates the provider accepts assignment of benefits, authorizes release of information and certifies the information for Insured, Patient, and Other Insured is true, accurate, and complete. In the case of a Medicare claim the patient's signature also authorizes any entity in receipt of the claim to release Medicare medical and non-medical information, including employment status and insurance information, including release of information to a named Other Insurance Plan. In other words, HIPAA's Release of Information code 'Y' is used.

(e) In some cases the ASP Service infers data from other data, such as described above for the Patient Signature Source field. If Customer determines that the ASP Service is not inferring data correctly, Customer may request updates to the ASP Service to correct the behavior. Ivertex will satisfy such requests in a timely manner pursuant to its internal scheduling and programming procedures. Customer requests should be very detailed to assist in appropriate action being taken in the most efficient manner possible.

### **1.4 Fees and Invoices**

(a) Unless quoted under separate cover, Customer agrees to pay Ivertex's current service charges for any ASP Services that Customer chooses to use. The service fees are posted on the Ivertex web site at <http://www.solace-emc.com>. Ivertex reserves the right to change its service fees. So long as Customer pays timely and is not otherwise in breach of this Agreement, Ivertex will provide at least three (3) months notice prior to any increase in service fees. Ivertex shall furnish Customer an invoice in advance of expiration. Invoices are due and payable upon receipt. Ivertex reserves the right, at its sole discretion and without further notice, to immediately terminate this Agreement or temporarily discontinue service if Customer's invoices remain unpaid 60 days after the invoice issue date but no earlier than 30 days after paid service has expired.

(b) The costs of any system modifications or enhancements, software, or services that are necessary for Customer to access or use the ASP Service are the sole responsibility of Customer. Customer will be responsible for additional fees, if any, invoiced by Ivertex for new features, modules, or products that may

from time to time be announced by Ivertex or requested as custom features by Customer, if accepted by Customer in writing prior to being invoiced by Ivertex.

(c) Customer agrees that the ASP Service is a service that can layer on top of traditional electronic claim clearinghouses, and there may be a third party contract or charges from the clearinghouse to the Customer that Ivertex shall not be responsible for paying, or privy to, even though the third party service is used in conjunction with the ASP Service. Ivertex will disclose all known third party contracts and charges when the Customer requests electronic submitter enrollment that may require a relationship with such a third party.

(d) Customer shall be responsible for any state, local and federal taxes or levies applicable to the transactions set forth under this Agreement, or imposed on the ASP Service or use thereof by Customer, whether imposed now or later by the applicable taxing authority, even if such imposition occurs after the termination of this Agreement.

### **1.5 Non-commercial use**

Customer agrees that Customer will only use the ASP Service for Customer's internal use, and Customer will not use or sublease the ASP Service to conduct or provide services on behalf of another individual or organization. Commercial use and sublease agreements are available from Ivertex for an additional fee.

## **2 Service Level Commitment**

### **2.1 Internet Platform**

The ASP Service is hosted on the global network known as the Internet. Ivertex shall maintain network service level agreements and provision communications channels with network service providers, clearinghouses, insurance companies, and other third parties (the "Downstream Network Providers") that will meet the reasonable needs of Customer.

### **2.2 System Availability**

(a) Based on existing service level guarantees from Ivertex' Downstream Network Providers, the ASP Service will be available 99.9% of the time, allowing approximately 5 hours of downtime per month. Ivertex or the Downstream Network Providers may make changes to these agreements or the services being offered that may result in changes to the service level. Ivertex will provide Customer with notice of any changes that it expects to impact the availability of the ASP Service. Ivertex will make available the current Downstream Network Providers' service level agreements and statements of capacity and availability to Customer upon written request. In situations where we have no service level guarantees from the Downstream Network Provider, or other statement as to their network availability, Ivertex can make no guarantees about the availability of data needing to be transmitted or received from that Downstream Network Provider.

(b) Customer agrees to notify Ivertex immediately if Customer suspects the Ivertex ASP website or the ASP Service is unavailable to Customer due to a fault of Ivertex. Customer agrees to provide information requested by Ivertex reasonably required for the proper diagnosis or repair of the Ivertex ASP website or the ASP Service.

(c) Ivertex reserves the right to amend the service level commitment from time to time effective upon notice to Customer. In the event of any amendment resulting in a material reduction of the service level commitments, Customer may elect to terminate this Agreement without penalty by providing Ivertex with written notice of termination within 30 days following notice of such amendment.

### **2.3 System Maintenance**

Ivertex reserves the right from time to time in its sole discretion to suspend, revise, modify or update any portion of the ASP Service. "Scheduled Maintenance" shall mean any planned maintenance of the Ivertex

website or the ASP Service that affects Customer's access to the ASP Service. Ivertex will use reasonable efforts to notify Customer in advance of any Scheduled Maintenance. Ivertex agrees to make reasonable attempts to perform Scheduled Maintenance during historically low use hours based on average use by Ivertex customers. Ivertex may conduct emergency maintenance of the Ivertex ASP website or the ASP Service on an "as needed" basis.

## **2.4 Data Retention**

With respect to transaction data, Ivertex and Customer agree to maintain back-up data files in accordance with industry standard best practices. Ivertex shall maintain Customer data, including outbound EDI files and inbound Trading Partner files and reports, for a period of three (3) years from the date the data was created or received. Data for trial (non-paid) accounts and terminated Customer accounts are limited to a sixty (60) day data retention period from the date the data was created or received. At termination of this Agreement, Customer may request in writing that all data be retained until, or deleted at, a specific date not to exceed 6 months from date of termination. Transaction data stored in back-up files shall remain subject to the terms of Section 3 of this Agreement.

## **2.5 System Features**

The ASP Service may include features that Customer cannot access. These features may include administrative features that are only accessible by Ivertex authorized personnel or automated systems, or features that are selectively enabled based upon each Customer's purchase and corresponding fees paid.

## **2.6 Customer Support**

Customer support is made available by e-mail and telephone during regular office business hours. The fees for support depend on Customer's purchase, and may or may not be provided for free with Customer's order. The Ivertex web site at <http://www.solace-emc.com> contains the official support policies and prices, which are subject to change outside the scope of this Agreement. Support channels in addition to e-mail and telephone will also be documented on the web site and are available to Customer.

# **3 Privacy**

## **3.1 Ownership of Data**

(a) Ivertex considers all data that Customer enters or creates in the ASP Service, or any data that was migrated from a legacy system, to be Customer's personal property. As a policy Ivertex does not examine any of Customer's information except at Customer's request and only for the purposes of providing Customer with technical support with regard to a particular issue. Ivertex will not use the information Customer has collected for Ivertex's benefit or the benefit of a third party.

(b) Customer agrees that the features provided by the ASP Service provide the sole and sufficient access to Customer's data and that Ivertex is under no obligation to provide access to the ASP Service or Customer's data if Customer's account is not active and in good standing. Customer acknowledges that Ivertex is under no obligation to provide Customer with a copy of Customer's data residing on Ivertex's systems. Ivertex will reasonably agree to provide Customer's data for a fair price equal to the effort required to retrieve the data. If Ivertex is ordered by a court of competent jurisdiction to provide Customer with a copy of its data, then Customer agrees to pay Ivertex to prepare a copy of Customer's data at Ivertex's then current hourly rates.

## **3.2 Analysis**

Ivertex reserves the right to perform statistical analysis of all of our ASP Service, websites and hosting systems to, among other things, measure the effectiveness of our web sites, to optimize website performance, and to ensure license compliance.

### **3.3 Protected Health Information**

(a) Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy Rule”). For purposes of this Agreement, the term “Protected Health Information” or “PHI” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(b) The parties acknowledge that Customer shares Protected Health Information (i.e. PHI) with Ivertex to accomplish delivery of the information to Trading Partners with whom Customer wishes to transact with, or for the purpose of customer or product support including networking or related hardware or software installation services, and not for any independent use by Ivertex. For support purposes, Customer grants to Ivertex permission to use data, transmissions, source documents and security access codes related to the access of PHI. Customer acknowledges the sole responsibility to ensure the physical security of all workstations containing PHI that are used to access the ASP Service. Customer acknowledges that Ivertex acts as its “business associate” in providing a leased system with each Customers' data maintained independently of each other and all transmissions performed on behalf of each individual Customer. Ivertex does not act as a “covered entity” or “clearinghouse” (each as defined by HIPAA and the HIPAA Privacy Rule) that would mix data from multiple customers.

(c) Ivertex agrees that it (a) will not use or further disclose PHI other than as permitted by this Agreement or as required by law; (b) will protect and safeguard from any oral and written disclosure all confidential information regardless of the type of media on which it is stored (e.g., electronic, paper, fiche, etc.) with which Ivertex may come into contact; (c) use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement or as required by law; (d) will ensure that all of Ivertex's subcontractors and agents to which Ivertex provides PHI pursuant to the terms of this Agreement shall agree to all of the same restrictions and conditions to which Ivertex is bound; (e) will report to Customer any unauthorized use or disclosure immediately upon becoming aware of it; (f) will indemnify and hold Customer harmless from all liabilities, costs and damages arising out of or in any manner connected with the disclosure by Ivertex of any PHI; (g) make available PHI in accordance with 45 CFR § 164.524; (h) make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526; (i) make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528; (j) make Ivertex's internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by one party on behalf of the other available to the Secretary of Health and Human Services, governmental officers and agencies, and Customer for purposes of determining compliance with 45 CFR § 164.500-534; (k) upon termination of this Agreement, for whatever reason, Ivertex will destroy all PHI received from, or created or received by Ivertex on behalf of Customer which Ivertex maintains in any form, and retain no copies of such information, or if such destruction is not feasible, to extend the precautions of this agreement to the information and limit further uses and disclosures to those purposes that make the destruction of the information not feasible for a period of seven (7) years; and, (l) will comply with all applicable federal and state laws and regulations, specifically including privacy and security standards of HIPAA, and the regulations promulgated there under, as amended from time to time.

## **4 Intellectual Property Ownership**

This Agreement confers no title or ownership in the ASP Service or any underlying software to Customer and is not a sale of any rights in the ASP Service or any software owned by Ivertex. Ivertex alone shall own all right, title and interest, including all related intellectual property rights, in and to the ASP Service

and its underlying software. Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the ASP Service or its content in any way; (ii) modify or make derivative works based upon the ASP Service or its content; (iii) create internet "links" to the ASP Service or "frame" or "mirror" any of its content on any other server or wireless or internet-based device; or (iv) decompile, disassemble, reproduce, reverse engineer or access the ASP Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the ASP Service, or (c) copy any ideas, features, functions or graphics of the ASP Service. User licenses cannot be shared or used by more than the number of users for which the corresponding fee has been paid.

## **5 Export Requirements**

Customer agrees not to export the ASP Service in violation of any applicable laws or regulations.

## **6 Term and Termination**

### **6.1 Term**

This Agreement will be effective upon payment of the applicable fee by Customer and shall continue in effect until terminated by either party. Either party shall have the right to terminate this Agreement upon 30 days written notice via USPS certified mail or Internet confirmed email. Upon termination, Ivertex shall refund to Customer any prepaid fees that extend Customer's service period beyond a three (3) month commitment.

### **6.2 Termination**

(a) Termination of this Agreement shall terminate all rights and licenses granted to Customer relating to the ASP Service. Upon termination, Customer shall promptly cease all use of the ASP Service, remove all files and data for the ASP Service from Customer's systems, and, at Customer's sole expense, cause to be returned to Ivertex, all materials provided by Ivertex with respect to the terminated ASP Service. If Customer terminates this Agreement within thirty (30) days of first using the ASP Service, Ivertex shall refund any fees received from Customer, upon Customer's fulfillment of all of its obligations under this Agreement.

(b) Either party may elect to terminate this Agreement upon written notice to the other party of a breach of obligations by that party regarding this Agreement unless the breach is cured within 30 days after such notice. Ivertex reserves the right to suspend or terminate this Agreement and Customer's access to the ASP Service if Customer's account becomes delinquent by more than thirty (30) days. All disclaimers of warranties and limitations of liability shall survive any termination of this Agreement.

## **7 Applicable Law**

Each of Ivertex and Customer hereby: (i) agrees that any legal proceeding arising out of or relating to this Agreement shall be instituted in the United States District Court for the State of Arizona or any court of general jurisdiction in the State of Arizona; (ii) consents to the personal and exclusive jurisdiction of such courts; and (iii) waives any objection that it may have to the laying of venue of any such proceeding and any claim or defense of inconvenient forum.

## **8 Ivertex Limited Warranty Statement**

### **8.1 Performance**

Ivertex warrants that the ASP Services shall perform substantially in accordance with its electronic product documentation.

## **8.2 Warranty**

(a) In the event that Customer discovers a documented and reproducible flaw in the ASP Service, Ivertex's sole responsibility shall be to use commercially reasonable efforts to correct such flaw in a timely manner. This warranty does not apply to any media or documentation which has been subjected to damage or abuse or to any claim resulting from changes in the operating characteristics of computer hardware or computer operating systems which are made after the release of the applicable Ivertex software, or which result from problems in the interaction of any Ivertex software with non-Ivertex software.

(b) USE OF THE ASP SERVICE IS AT CUSTOMER'S SOLE RISK. Ivertex DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES Ivertex MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE ASP SERVICE. Ivertex MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RELATION TO THE SERVICE. THE ASP SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. Ivertex IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **8.3 Limitation of Liability**

TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT SHALL IVERTEX BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS) ARISING OUT OF THE USE OR INABILITY TO USE THE ASP SERVICE, EVEN IF IVERTEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, IVERTEX'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR USE OF THE ASP SERVICE IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

## **8.4 Indemnification**

Customer shall indemnify and hold Ivertex and its subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer's data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; or (iii) a claim arising from the breach by Customer of this Agreement, provided in any such case that Ivertex (a) gives written notice of the claim promptly to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally releases Ivertex of all liability and such settlement does not affect Ivertex' business or ASP Service); (c) provides to Customer all available information and assistance; and (d) has not compromised or settled such claim.

## **9 Non-Waiver**

The waiver by either party of any default or breach under this Agreement shall not constitute a waiver of any subsequent default or breach of the same or of a different kind.

## **10 Entire Agreement**

This Agreement supersedes any prior oral or written statements, agreements, or representations and can be changed only by an amendment designated as such and signed by an authorized officer of both parties. In the event that one or more of the provisions of this Agreement shall be found illegal or unenforceable, then such provisions shall be deemed struck and other provisions of the Agreement shall remain in force and effect. Preprinted terms and conditions of a purchase order from Customer that is in addition or inconsistent with this Agreement shall not be binding and shall not modify this Agreement.

## **11 Amendments**

Ivertex reserves the right to amend this Agreement from time to time, and Customer agrees to be bound by those amendments unless Customer promptly instructs Ivertex otherwise. Ivertex and Customer agree to mutually amend this Agreement to the extent required by the provisions of HIPAA and regulations promulgated thereunder, in order to assure that this Agreement is maintained consistent therewith.

## **12 Notices**

Ivertex may give notice by means of a general notice on the ASP Service, electronic mail to Customer's email address on record in Ivertex' account information, or by written communication sent by first class mail or pre-paid post to Customer's address on record in Ivertex' account information. If Customer has questions regarding this Agreement or wishes to obtain additional information, please send e-mail to [info@ivertex.com](mailto:info@ivertex.com) or call 602-439-2525. If Customer needs to submit written notices or documentation to Ivertex, Customer may send facsimiles to 602-439-0808 or mail Ivertex at PO Box 86609, Phoenix, AZ 85080-6609.

This is revision 3 published February 10, 2009 after customer review and feedback. Changes from revision 2 published August 8, 2005 include clarifications and removal of quarterly payment options in section 1.4a, rewording of section 2.4 for clarity, and clarification in section 3.3b regarding Ivertex acting as a 'business associate'.