

TOTALMD DEALER AGREEMENT (COMMISSION)

This TotalMD Dealer Agreement (“Agreement”) is entered and made effective by and between TotalMD, Inc. an Arizona Corporation (“TotalMD”) and the undersigned Dealer (“Dealer”).

1. Appointment and Acceptance.

Subject to the terms and Conditions of this Agreement, TotalMD appoints the Dealer as a non-exclusive authorized Dealer of the TotalMD Software and associated services offered via the Internet (collectively “Services”). Dealer hereby accepts such appointment and agrees that the relationship of the parties shall be subject to the terms and conditions of this Agreement. The licenses granted to Dealer hereunder are non-transferrable.

2. Relationship of Parties.

The parties shall be deemed to be independent contractors and this Agreement shall not be construed to create any partnership, franchise, joint venture or agency. Dealer shall provide an IRS W-9 form to facilitate TotalMD making commission payments to Dealer.

3. Protection of Property Rights.

A. In accordance with the terms and conditions of this Agreement, Dealer acknowledges that it has acquired the limited right and license to offer the Services from TotalMD only, and to offer the Services to individuals or entities (“End-Users”) for use in their internal business operations only, and that no other right, title or interest in or to any copyrights, trademarks or other proprietary rights relating to the Services are transferred or licensed from TotalMD to Dealer hereunder.

B. Dealer shall not remove, alter or cover any copyright notice, trademark or other proprietary rights notice placed by TotalMD on the Services or any portion thereof.

C. Dealer shall not, without the prior written consent of TotalMD, make alterations in or to the Services; grant sublicenses, leases or other rights in the Services except for licenses in the ordinary course of business as authorized by this Agreement; or make verbal or media translation of the help screens or other aspects of the Services.

D. Dealer acknowledges and agrees that TotalMD reserves the right to contact End-Users, and to market other TotalMD services and products to End-Users.

4. Dealer Obligations.

Dealer shall at all times during the term of this Agreement devote commercially reasonable efforts to promote and sale the Services to End-Users consistent with good business ethics and in a manner that will reflect favorably on the Services and on the goodwill and reputation of TotalMD. Dealer shall ensure End-Users complete and return the applicable TotalMD Order forms and that the End-User’s name and related contact information is accurate. Dealer shall provide each End-User with a copy of the End-User License Agreement, Terms of Service, Service Level Policy, Support Policy, and System Requirements for the Services.

5. Warranty to End-User Only.

A. TotalMD hereby warrants for End-User only that the Services will, at the time of use, conform in all material respects to TotalMD’s most current published specifications pertaining to the Services.

TotalMD

further warrants that the Services will, under normal and anticipated use, and when used in the specified operation environment, be free from material operating defects. This warranty shall not extend to products or services offered or supplied by Dealer or any third party unless such products or services are approved in writing by TotalMD.

B. TOTALMD MAKES NO WARRANTY WHATSOEVER TO DEALER. EXCEPT AS SET FORTH IN THIS SECTION 5, COMPANY DISCLAIMS ALL OTHER WARRANTIES TO RESELLER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO THE SUITABILITY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PRODUCTS OR PROGRAMS FURNISHED HEREUNDER OR FOR ANY RESELLER PRODUCTS PREPARED BY RESELLER. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOST OR ANTICIPATED PROFITS, OR ANY INCIDENTAL, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Term and Termination.

This Agreement shall become effective on the date that both parties have executed the Agreement. The term of this Agreement shall continue for a term of twelve (12) months (“Initial Term”). At the expiration of the Initial Term, this Agreement will continue to be effective until such time as either party terminates this Agreement pursuant to this Section. Either party may terminate this Agreement after the expiration of the original term upon not less than thirty (30) days prior written notice to the other party. TotalMD may terminate this Agreement immediately upon written notice in the event of any material violation of Section 3 or Section 4 by Dealer. Upon termination or expiration of this Agreement for any reason, TotalMD may contact and contract directly with any End-User.

If this Agreement is terminated for any reason, End-Users will be allowed to continue to use the TotalMD software as long as End-Users continue to pay the associated monthly fees to use the TotalMD Software. After such termination, so long as End-Users continue to pay the monthly fee for TotalMD’s software, TotalMD will continue to compensate Dealer in accordance with the compensation terms defined in this Agreement for 6 months after termination date.

7. Dealer Commissions for TotalMD Bundles.

TotalMD agrees to pay Dealer commissions for all Dealer generated sales during the term of this Agreement. Commissions will be paid to Dealer no later than thirty (30) days after TotalMD receives payment from the End-User. No Dealer commissions are paid on initial set up or consulting services performed by TotalMD. Commissions shall be paid in the amount of 30% of the “Net Revenue” (Net Revenue is defined as actual revenue minus expenses associated with E-prescribe, Patient Portal, Patient Texting, Patient Communicator, eSolutions, electronic faxing, server costs and other expenses) generated from all Dealer contracted End-User as follows:

TotalMD Standard – \$99/month

This includes practice management software only.

TotalMD Complete – \$279/month

This includes practice management software, electronic health records software, document center, patient texting and E-prescribe.

TotalMD Pro – \$399/month

This package includes practice management software, electronic health records software, document center, E-prescribe, Patient Portal, electronic faxing, eSolutions bundle, and Patient Communicator.

In the event any Net Revenue is deemed uncollectable, the paid commissions will be charged back against subsequent commission payments.

8. Dealer Commission on Ancillary Products and Services.

When ancillary products and services are sold a la carte (i.e. outside of the TotalMD bundle items listed in section 7), TotalMD agrees to pay Dealer a 25% commission for these ancillary products and services. Commissions will be paid to Dealer no later than thirty (30) days after TotalMD receives payment from the End-User. No Dealer commissions are paid on initial set up or consulting services performed by TotalMD. Commissions shall be paid in the amount of 25% of the “Net Revenue” (Net Revenue is defined as actual revenue minus expenses associated with the possible ancillary products and services). These products and services include: E-prescribe, Patient Portal, Patient Texting, E-claims, ERA, and Eligibility, Patient Communicator or other services as may be identified by amendment.

Commissions are only for sales generated by a Dealer who facilitates End-User contracting with TotalMD and are as follows:

Product Service Name	Monthly Retail Price	Sample Monthly Commission based off of Net Revenue
Total Recall Solutions’ Patient Communicator per Practice*	\$99	\$17.25
DrFirst Electronic Prescription per Provider*	\$69	\$8.50
Updox Message Center with Faxing*	\$99	\$14.25
Appointment Texts		
500 Appointment Texts per Month by Provider	\$29	\$6.00
1000 Appointment Texts per Month by Provider	\$49	\$9.75
5000 Appointment Texts per Month	\$99	\$13.50
eSolutions e-claim services*		
Bundle (includes ERA, e-claims and eligibility)	\$99	\$11.63
E-claims per single claim	\$0.39	\$0.0475
Electronic remittance advice per claim	\$0.29	\$0.0475
Eligibility	\$0.39	\$0.0525
Institutional Claims	\$0.49	\$0.0575
Print Claims	\$0.69	\$0.0425
Coding Advisor*		
First User	\$17	\$2.75
Each Additional User	\$10	\$1.98

*These services are through third parties.

Products and Services through third parties are outside of TotalMD’s control and are subject to possible price and cost changes and termination of dealer commissions without notice. Accordingly, Section 6 does not apply to products and services from third parties. Third parties currently are as follows: Total Recall Solutions, DrFirst, Updox, eSolutions and Coding Advisor. Additional third parties may be added.

9. TotalMD Name and Logo.

Dealer may reference TotalMD on applicable advertising, promotion or marketing material related to TotalMD's software. A TotalMD Logo will be provided to Dealer by TotalMD. Dealer's marketing efforts that display TotalMD's name or logo will make clear to customers that Dealer is not TotalMD but rather a Dealer of TotalMD's products and services.

10. License to End-Users.

Dealer has represented and TotalMD has relied on the representation that Dealer is engaged in the marketing of the services only at the functional level of a Dealer providing computer services to End-Users in the United States of America. Prohibited activity under this Section includes, but is not limited to providing access to the services to anyone other than End-Users.

11. Dealer Indemnification.

Dealer agrees to indemnify and hold TotalMD harmless from any and all claims, damages and liabilities resulting from statements, actions, or omissions of Dealer, its employees or agents; or material breach of this Agreement by Dealer. Such indemnification shall include all reasonable legal fees and other costs incurred by TotalMD in defending such claims.

12. Entire Agreement; Amendment.

This Agreement sets forth and constitutes the entire understanding of the Parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings, premises, and representations made by either party to the other party concerning the subject matter hereof and the terms applicable hereto. This Agreement may not be released, discharged, amended, or modified in any manner except by an instrument in writing signed by duly authorized representatives of both parties hereto.

13. Notices.

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be considered effective when deposited in the U.S. mail as registered mail, return receipt requested, postage prepaid, and addressed to the party at their respective business addresses as may be designated in writing by the parties from time-to-time.

14. Choice of Law.

This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of Arizona as applied to contracts made and to be performed entirely within Arizona without regard to any conflicts of law provisions. Jurisdiction and venue for any action brought to interpret or enforce this Agreement shall be proper only in Maricopa County, Arizona and the parties hereto agree to such exclusive jurisdiction and venue.

15. Severability.

If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the Parties, it shall be stricken and the remainder of this Agreement shall remain in full force and effect.

16. Headings.

Headings contained in this Agreement are included for convenience only.

17. Force Majeure.

A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is:

beyond the reasonable control of a party;

materially affects the performance of any of its obligations under this agreement; and

could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

18. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same document.

19. Waiver.

No waiver of any right under this Agreement shall be deemed effective unless set forth in a writing signed by the Party charged with such waiver, and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future such right or of any other right arising under this Agreement.

20. Signatures.

Intending to be bound hereby, the duly authorized representatives of the parties have affixed their signatures below.

FOR TotalMD –

Signature _____
Date

Printed Name and Title

FOR Dealer –

Signature _____
Date

Printed Name and Title