

BILLING AND DATA MANAGEMENT SERVICES AGREEMENT

This Billing and Data Management Services Agreement (“**Agreement**”) Contract is effective as of _____ 20____, by and between _____ (“**the Customer**”), and da Vinci Motion Graphics, Inc, doing business as da Vinci Network Services (“**da Vinci**”), 201 Robert S Kerr, Suite 603, Oklahoma City, OK 73102.

RECITALS:

WHEREAS, **da Vinci** provides a billing and data management service (“**Service**”) enabling **the Customer** to maintain electronic and paper records of certain services provided to clients and to submit claims for reimbursement from organizations for those services eligible for reimbursement (“**Payor**”);

WHEREAS, **the Customer** desires to use the services of **da Vinci** to enable **the Customer** to maintain such records and to submit such claims for reimbursement;

WHEREAS, **da Vinci** desires to provide the necessary services to **the Customer**.

THEREFORE, the parties agree as follows:

1. **da Vinci** will provide data management services to **the Customer** to assist **the Customer** in tracking services performed by its agents, officers, and employees to submit claims to **Payors** supported by **da Vinci**.
2. **da Vinci** will provide server software, hardware, operating system(s), administration and maintenance. Location, architecture, design, brand and any other particular details are at **da Vinci's** discretion but **da Vinci** agrees to provide:
 - 2.1. Permanent, electronic storage and retrieval of data pertaining to the **Service** including off-site backups sufficient to ensure that no more than approximately one day's data is lost in the event of catastrophic failure at a single location.
 - 2.2. Substantially continuous availability via the Internet except during scheduled or emergency maintenance.
 - 2.3. Scheduled maintenance will address issues such as operating system software or hardware upgrades that are not time-critical and will be done at a time intended to minimize disruption for **the Customer** and other **da Vinci** customers. **The Customer** will be notified at least forty-eight hours in advance and any objections **the Customer** has and provides in writing to the timing will be given significant consideration by **da Vinci**.
 - 2.4. Emergency maintenance will address time-critical issues such as security updates or hardware failure and may occur at any time subject to **da Vinci's** reasonable discretion. **da Vinci** will take reasonable steps to minimize the duration of any attendant outages and no outage will exceed twelve hours even in the case of catastrophic failure.
 - 2.5. **da Vinci** may briefly and without notice disable the **Service** in order to perform very short (approximately five minutes) maintenance at times when recent usage patterns and/or time period indicate a low probability of attempted usage during that time.

3. **da Vinci** will provide Client Software to be run by **the Customer's** employees, subcontractors or other users authorized by **the Customer** for access to the **Service**. **The Customer** is responsible for providing the computer systems and Internet connectivity necessary to run the Client Software. **da Vinci** will ensure that the Client Software is compatible with at least one recent (no more than one year after being superseded by a newer version) and commonly available operating system from Microsoft and at least one recent and commonly available distribution of Linux. Additional platforms may become available at **da Vinci's** discretion or pursuant to paragraph 12 of this Agreement.
4. Training and support including:
 - 4.1. Telephone and email support during business hours for all employees of **the Customer** and other authorized users of the Client Software.
 - 4.2. On-site training not to exceed four one-day instances per year and never so frequent as to exceed two one-day instances in four weeks.
 - 4.3. Emergency after hours support via pager, cell phone or similar device for at least one designated representative of **the Customer**.
5. **da Vinci** will provide software updates to enable new features, fix bugs and accommodate changes required by supported **Payors** and applicable regulations. Any bugs or changes required by the **Payor** currently in effect which substantially impair **the Customer's** ability to transact business will be considered high priority, having at least one programmer working on the issue full-time until it is resolved. Such a resolution may be or include a work-around rather than a complete fix. In that case, the complete fix will be included in a later update and will not require high priority measures. Provided that **da Vinci** receives adequate and accurate notice of changes required by a **Payor** or regulations prior to their taking effect, **da Vinci** will make a good faith attempt to provide the necessary updates before the requirements take effect.
6. From time to time during the Agreement and at its sole discretion, **da Vinci** will provide software updates to enable new features. However, if said new features are not required by **Payors** or applicable regulations, said features will be addressed after the updates referenced in paragraph 12 of this Agreement.
7. **The Customer** is hereby licensed to install and run the Client Software on any number of computers for use by its employees, subcontractors or other users authorized by **the Customer**. The Client Software may only be used in conjunction with the **Service**. All other right, title or interest in the Client Software is reserved.
8. **The Customer** is hereby authorized to connect to **da Vinci's** server(s) via the Client Software and in conjunction with the **Service**. In no event does **the Customer** acquire any other right, title or interest in or to the server(s) or any software or the original data contained thereon.
9. **da Vinci** will provide **the Customer** with a copy of all current clinical and payment data pertinent to **the Customer** that is stored as part of the **Service** within seven (7) days of receipt of written notice. The copy will be in a format of **da Vinci's** choice on a commonly available medium such as CDROM. **The Customer** may obtain other formats pursuant to paragraph 12 of this Agreement.

10. **The Customer** will provide **da Vinci** with the information necessary to enable **da Vinci** to file complete and accurate claims on its behalf. In performing its services under this Contract, **da Vinci** will require access to confidential information maintained by **the Customer**. **da Vinci** will maintain the confidentiality of this information and will comply with state and federal law and regulations addressing such information.
11. **The Customer** agrees to assist and cooperate with **da Vinci** in completing the necessary paperwork, contracts, log-in accounts or other items required for **da Vinci** to conduct electronic transactions with the supported **Payors** that **the Customer** wishes to utilize.
12. Although **da Vinci** will fix problems and add features in accordance with paragraph 5 of this Agreement at no additional charge, there may be features beyond those that **da Vinci**, in its discretion, wishes to add. **da Vinci** will provide, within a reasonable period of time, at least one programmer to implement such a feature at a rate of eighty dollars per hour. In the event that **da Vinci** determines such a change will require a fork in its code base, **da Vinci** may require **the Customer** to pay an additional service fee to maintain the new fork.
13. **The Customer** is required to use the **Service** as the sole method of data entry or manipulation for organizations or entities with which the **Service** exchanges information electronically. In the event that such otherwise forbidden activities do not, at **da Vinci's** reasonable discretion, interfere with **da Vinci's** performance of the **Service**, **da Vinci** will authorize the activities in writing.
14. For each state in which a facility is configured in the **Service**, **the Customer** agrees to pay **da Vinci** a monthly fee which is _____ dollars plus a fee ("**Service Fee**") for each unit of service paid by a **Payor** ("**Paid Service**") based on one percent ("**Percent**").
 - 14.1. The **Service Fee** is the **Percent** multiplied by the **Payor's** standard reimbursement rate for one unit of such service rounded to the nearest cent with .5 rounding up.
 - 14.2. The **Service Fee** will not apply for a unit of service not submitted electronically by **da Vinci** to the **Payor**.
 - 14.3. A unit of service is not a **Paid Service** unless it was submitted electronically to the **Payor** by **da Vinci**.
 - 14.4. A unit of service is a **Paid Service** if it is not denied by the **Payor**. Due to a variety of **Payor**-specific reasons, including but not limited to contractual adjustments, certain services may not be denied but pay less than the full standard reimbursement amount. Such a unit of service is still a **Paid Service** even if the reimbursement amount is zero.
 - 14.5. In the event that a **Paid Service** is voided or recouped, **da Vinci** will provide a credit against current or future fees equal to the **Service Fee**.
 - 14.6. Each **Service Fee** is assessable once **da Vinci** processes the remittance payment information from the **Payor**. In the event that remittance payment information is not available within six (6) months or thirty (30) days of termination by either party, all billed services will be assumed approved and therefore the **Service Fee** will apply to all such unreconciled services. **da Vinci** may allow a longer period of time without waiving the right to said fee.
 - 14.7. All **Payor** reimbursements will be paid to **the Customer** and not to **da Vinci**.

- 14.8. **da Vinci** will issue an invoice for its services to **the Customer**, based on all outstanding fees and credits at the end of each month. **The Customer** agrees to pay each such invoice within thirty (30) days of receipt.
- 14.9. **The Customer** agrees to hold **da Vinci** harmless from billing errors or claims against **the Customer** that result from inaccurate information provided to **da Vinci** by **the Customer**, its agents, officers, or employees. **da Vinci** will indemnify and hold **the Customer**, its agents, officers and employees harmless against any claim, demand or action (including defense costs) against **the Customer**, arising from or growing out of the negligence of **da Vinci** in the performance of services provided pursuant to this Contract.
15. HIPAA Compliance: The parties have entered into a Business Associate Agreement for purposes of complying with HIPAA. Said agreement is incorporated herein by reference. The parties agree that it is not feasible for **da Vinci** to return or destroy all of the Protected Information. As a result, **da Vinci** agrees to take the following steps to ensure the security of said Information after termination of this Agreement:
- 15.1. All Protected Information concerning the customer will be removed from all mutable media under **da Vinci's** control with the exception of backups.
- 15.2. Protected Information concerning the customer will remain in backups indefinitely. In the event that **da Vinci** extracts data from a backup that includes Protected Information, **da Vinci** will either avoid the extraction of Protected Information or it will remove the extracted Protected Information in a reasonably short period of time.
16. General
- 16.1. Notices. All notices, demands or consents required or permitted hereunder shall be in writing and shall be hand delivered, sent by telegram or telex, or mailed to the respective parties at the addresses first set forth above, or at such other address as shall have been given to the other party in writing for the purposes of this clause. Such notices and other communications shall be deemed effective upon the earliest to occur of (a) actual delivery or (b) five days after mailing, addressed and postage prepaid, return receipt requested, as aforesaid.
- 16.2. Waiver and Amendment. No waiver, amendment or modification of any provision hereof shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No failure or delay by either party in exercising any right, power or remedy hereunder shall operate as a waiver of any such right, power or remedy.
- 16.3. Choice of Law. This Agreement shall be governed by the law of the State of Oklahoma as such law is applied by Oklahoma courts to contracts between Oklahoma residents entered into and to be performed within the State of Oklahoma.
- 16.4. Venue of Legal Action. Any legal action initiated on this Agreement or arising out of or related thereto shall be brought only in the Oklahoma County District Court, Oklahoma City, Oklahoma.
- 16.5. Integration. This Agreement constitutes the final, complete and exclusive agreement of the parties concerning the subject matter hereof, and supersedes any other communication related thereto.

- 16.6. Severability. In the event that any provision of this Agreement shall be unenforceable or illegal, such provision shall be severed; and the entire Agreement shall not fail, but the balance of the Agreement shall continue in full force and effect. In such event, the parties agree to negotiate in good faith a substitute enforceable and legal provision which most nearly effects the intent of the parties in entering into this Agreement.
- 16.7. Attorney Fees. The prevailing party in any arbitration or judicial action brought to enforce or interpret this License or for relief for its breach shall be entitled to recover its costs (including its share of arbitration fees) and its reasonable attorney's fees therein incurred.
- 16.8. Counterparts. This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 17. This Contract may be terminated by **da Vinci** with no less than thirty (30) days written notice. **The Customer** may cancel with written notice at any time. Upon receipt of written notice, **da Vinci** will make a final submission of all billable claims in the system. If **da Vinci** is unable to reconcile these final claims they will be invoiced immediately as per paragraph 14 of this Agreement. If requested in the written cancellation notice, **da Vinci** will provide **the Customer** with a copy of all current clinical and payment data pertinent to **the Customer** as detailed in paragraph 9 of this Agreement.
- 18. The parties will not solicit for employment any employee of the other during the term of this Contract and for one (1) year thereafter.

The parties indicate their agreement with the above terms and conditions by their signatures below.

The Customer: _____

Signature: _____

Date: _____, 20__

Name: _____

Title: _____

da Vinci Motion Graphics, LLC d/b/a da Vinci Network Services

Signature: _____

Date: _____, 20__

Name: _____

Title: _____