

## **D & D CLAIMS BUSINESS AND BILLING AGREEMENT**

THIS AGREEMENT is made and entered into by and between **D & D CLAIMS MANAGEMENT**, a New York corporation, (hereinafter referred to as "Company") and \_\_\_\_\_ (your company name), operating as a \_\_\_\_\_, (hereinafter referred to as "Facility").

(corp., partnership, sole proprietorship)

WHEREAS, Company is engaged in the business of computer software development and production and the electronic processing (translation) and transmittal of healthcare claims information as a Claims Clearinghouse;

WHEREAS, Facility owns and operates a(n) \_\_\_\_\_ (i.e.: Billing Service/Medical Practice) at \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ zip: \_\_\_\_\_.

WHEREAS, Company has the technology and expertise to electronically receive and edit Facility's claims and to transmit those claims to indicated entities, including but not limited to (a) insurance companies, (b) other clearinghouses, (c) state and government program intermediaries, and (d) provider groups (hereinafter referred to as "Entity" or Entities");

WHEREAS, Facility recognizes the benefits of company's services to the processing of its claims and wishes to engage Company to provide such services; and

WHEREAS, Company is willing to provide services to Facility, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants set forth in this Agreement, the parties agree as follows:

1. **Scope of Services.** Company shall electronically receive applicable claims data from Facility (be it over telephone lines), electronically edit and reformat that data in accordance with agreed upon specifications, and transmit the resulting data to each respective Entity (as indicated on each claim). Collectively this work is referred to in this Agreement as the "Services."

2. **Set-Up Work.** In order to make the changes to its own computer system and to Facility's computer system necessary to accomplish the Services, Company shall:

- (a) Furnish detailed data specifications to Facility concerning the information required to be transmitted from Facility to Company for the provision of the Services;
- (b) Furnish detailed specifications to Facility on the required communications peripherals that are necessary to transmit data to Company;
- (c) Test the output of Facility's computer system as modified, prior to the processing of claims.

3. **Claims Processing.** In connection with the provision of the Services, Company shall:

- (a) Receive data electronically that conforms to Company's specifications from Facility;
- (b) Electronically edit and reformat all such data so that it conforms to the individual specifications of the Entity (or Entities) indicated as claims destinations;
- (c) Electronically transmit Facility's claims to the Entities in a form that conforms with the specifications of each Entity. Company shall properly edit and format Claims, and shall transmit them to their indicated Entities as outlined in Section 6.
- (d) Furnish periodically to Facility a transmittal report specifying the number of claims Company received from Facility and subsequently transmitted, and the date of processing.
- (e) Provide limited technical support at Company's discretion for the Company software installed on Facility's system to permit the provision of the Services.

4. **Suspended Claims.** For claims that are suspended by Company's computer system as a result of being found incomplete or invalid, Facility shall transmit the corrected suspended claims data to company either electronically or by fax. Facility acknowledges that, while Company's editing and reformatting process is designed to suspend most incomplete or invalid claims, not all claims transmitted to Entities will be in perfect form and transmitted claims may occasionally give rise to questions from such Entities. Facility shall deal directly with these Entities in resolving questions about claims that have been transmitted, and Company shall bear no responsibility or liability for the transmission of such claims.

5. **Facility's Responsibilities.** In order to facilitate the Services to be provided by Company under this Agreement, Facility shall:

- (a) Obtain and install any and all required communications peripherals necessary for Facility's system, as indicated by Company;
- (b) Assist Company in the testing of Facility's modified computer system prior to the transmittal of data;
- (c) Transmit all of its applicable claims to Company for processing in conformance with Company's data specifications;
- (d) Resolve any suspended claims, giving necessary information to Company in a timely manner;
- (e) Read and follow all instructions and guidelines provided into this Agreement by reference;
- (f) Train Facility staff in use of Facility's computer system and practice management software;
- (g) Retain payor and other reports provided to Facility by Company, and provide Company copies of such reports as requested (company does not retain copies of reports sent to Facility);
- (h) Submit questions and concerns to Company regarding the transmission of claims within sixty (60) days of original transmission to Company. A research fee may be charged for addressing issues not submitted within this allotted time, as outlined in Section 7.
- (i) If Facility is a billing service and is billing on behalf of providers, then Facility will also comply with the Billing Service Requirements.

6. **Facility's Transmittal Times.** There are no restrictions with regard to day-of-week or time-of-day for the transmission of Claims to Company. Claims received at the Company by 3 pm (EST) will be edited, formatted, and transmitted (if not rejected or suspended) to Entities the same business day, unless Entity is unable to receive Claims when transmitted by Company or except as indicated

in Section 12.

7. Pricing and Additional Fees. For the Services performed by Company, Company shall charge, and Facility agrees to pay the per claim charge stated in original agreement or attachment A, subject to the listed minimum monthly charge. The per claim charge will be charged for each claims that is either accepted or suspended by Company's computer following receipt. There will be no per claim charge for claims rejected for processing by the Company software. Company reserves the right to increase Facility's price per claims charge or the monthly minimum charge upon 30 days' written notice if, in the discretion of Company, Facility requires above average technical or claims processing support.

8. Invoices and Payment. Company shall submit invoices to Facility before the 5<sup>th</sup> day of each month for Services rendered in the previous month. The amounts due Company for the Services shall be paid by Facility net 15 days. Customers with more than two late payments within a 6 month period may be charged a higher per claim rate (upon 30 days' written notice) and/or encounter a delay in processing of new claims files, and \$20 late fee.

9. Taxes. Facility shall be responsible for the payment of any tax or other governmental assessment or surcharge applicable to the provision of Services by Company.

10. Term and Termination of Agreement. This Agreement shall become effective when it has been signed on behalf of both Company and Facility, and shall extend for a term of 60 days from the date of the final signature. Following this initial 60 days this Agreement shall be extended automatically for additional 30 day terms until otherwise terminated by the parties as outlined in this Section. The parties recognized that this Agreement is dependent upon the continuing willingness of indicated Entities to accept claims electronically transmitted by Company. If one or more individual Entities to whom Company sends Claims on behalf of Facility decides to not accept claims electronically from Company for any reason, Company may immediately terminate this Agreement and the parties shall have no further liability to each other. In the event that Facility submits no Claims to Company for a period of 6 consecutive months, Company may terminate this Agreement immediately or, in this discretion, upon reasonable notice to Facility. In addition, either party may terminate this Agreement without cause by giving thirty (30) days' written notice to the other party. In the event of a material breach of this Agreement, that is not cured by the offending party within the (10) working days of receipt of written notification of the breach from the offended party, this Agreement may be immediately terminated for cause. The parties agree that they will attempt to settle any controversy or claim arising out of or relating to this contract or the breach of thereof through good faith mediation with neutral mediator. If the dispute is not settled in mediation, the parties agree that the venue for any action on this Agreement shall be in Suffolk County, New York.

11. Additional Modifications to Facility's System. If Facility (including its consultants or vendors) makes changes within its computer system that affect the conformance of its output with Company's data specifications, Facility shall promptly make corrective modifications or, alternatively, may request that Company make such modifications. In the event that Entities change data specifications during the term of this Agreement, it may be necessary to make additional modifications to Facility's system. Upon receipt of notice from Company of any such required changes, Facility shall promptly make such modifications as are necessary or, alternatively, may request that Company make such modifications. Company reserves the right to refuse to make the requested modifications, either before or after an initial evaluation of the work required. However, if company agrees to Facility's request to perform any modifications to Facility's system under this Section, Facility shall pay for such modifications made by Company at Company's then prevailing rates for time, material and expense. A Company-developed estimate will be approved by Facility prior to any such modifications being performed. Company provides no support of any Facility software other than the software provided by Company.

12. Interruptions. Company and Facility acknowledge to each other that interruptions in Facility's transmittal of data and in Company's processing and transmittal of claims can occur as the result of a number of planned or unplanned events. Such events include, but are not limited to, severe weather, fire, equipment failure, operator error, electrical outage, telephone service interruption, system modification or conversion, software related issues, facility relocation, and many other causes both intended or unintended. The parties agree that neither of them shall be liable to the other as the result of any such interruptions, whether similar or dissimilar to the events and causes listed above.

13. Consequential Damages. The parties agree that Company shall not be liable under any circumstances for consequential damages which may be incurred by Facility as a result of Company's performance or nonperformance under this Agreement. The term "consequential damages" as used herein shall include delay in receiving payment on claims and loss of earnings.

14. Confidentiality of Healthcare Claims Information – HIPAA Business Associate Provisions. Company and Facility agree to comply with the rules for the use and handling of Protected Health Information ("PHI") under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 164.204 *et seq.* ("Privacy Standards"), the Security Standards, 45 C.F.R. § 164.302, *et seq.* ("Security Standards"), and the Transaction and Code Set Standards, 45 C.F.R. § 162.100, *et seq.* ("Transaction and Code Set Standards") as amended from time to time and at the applicable compliance dates. The capitalized terms in this Section will have the same meaning as provided under the Privacy Standards, Security Standards, and Transaction and Code Set Standards, and the terms of this Agreement will be construed in light of any applicable interpretation or guidance on any of these standards issued by the Department of Health and Human Services. Company is a Business Associate of Facility under the Privacy Standards, and therefore agrees to comply with the following:

(a) Uses and Disclosures Of Protected Health Information. Company will use or disclose PHI received from Facility only for those purposes necessary to perform Services, as otherwise expressly permitted in this Agreement, or as required by law, and will not further use or disclose such PHI. Company agrees that anytime it provides PHI received from Facility to a subcontractor or agent to perform Services for Facility, Company first will enter into a contract with such subcontractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of PHI as contained in this Agreement.

(b) Company Use Or Disclosure Of Protected Health Information For Its Own Purposes. Company may use or disclose PHI received from Facility for Company's management or administration, or to carry out Company's legal responsibilities. Company may disclose PHI received from Facility to a third party for such purposes only if:

(1) The disclosure is required by law; or

(2) Company secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by law or for the purposes for which it was disclosed to the recipient; and (iii) notify Company of any breaches in the confidentiality of the PHI.

(c) Safeguards. Company will implement administrative, physical and technical safeguards to prevent use or disclosure of

PHI received from Facility for purposes other than those permitted by this Agreement and to protect the confidentiality, integrity, and availability of the electronics PHI, if any, that Company creates, receives, maintains, or transmits on behalf of Facility.

(d) Reports Of Improper Use Or Disclosure Of Protected Health Information. Company will report to Facility any use or disclosure of PHI received from Facility for purposes other than those permitted by this Agreement and will report to Facility any security incident of which it becomes aware that affects electronic PHI created on behalf of or received from Facility.

(e) Access To Protected Health Information. Company will make available to Facility PHI received from Facility that is in Company's possession to respond to individual requests for access to PHI, as applicable to Facility. Facility will be responsible for making all determinations regarding the grant or denial of an individual's request for access to the individual's PHI.

(f) Amendment Of Protected Health Information. Company will make available to Facility PHI received from Facility that is in Company's possession to respond to individual requests to amend PHI, as applicable to Facility. Facility will be responsible for making all determinations regarding amendments to PHI.

(g) Accounting Of Disclosures Of Protected Health Information. Company will make available to Facility information as is required for the Facility to make an accounting of disclosures of PHI to an individual, as applicable to Facility. Facility will be responsible for providing an accounting to such an individual.

(h) Access To Books And Records. Company will make its internal practices, books, and records on the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining Facility's compliance with the Privacy Standards. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Company or Facility as a result of this Section

(i) Return Or Destruction Of Protected Health Information Upon Termination. Because of regulatory restrictions and business reasons, it will not be feasible for Company to return or destroy PHI received from Facility that Company may still retain upon termination of the Agreement. Company thus agrees to follow the provisions of this Agreement for as long as it retains the PHI received from Facility, and will limit any further use or disclosure of the PHI to those purposes.

15. Notices. Any notice required or permitted to be given hereunder, shall be either delivered in person or sent by certified mail, return receipt requested, postage prepaid and addressed as follows:

To Company:

Mr. Dennis Doney, President  
D & D Claims Management Inc.  
146 Muncy Ave West Babylon, NY 11704

To Facility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facility also designates \_\_\_\_\_ as the primary authorized contact with Company to provide all information and assistance Company needs from Facility for the effective processing of Claims. The authorized contact person may change as designated in writing or orally to Company by an appropriate Facility representative.

16. Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York.

17. Entire Agreement; Modification of Agreement. This document and the documents which are incorporated by reference contain the entire understanding and agreement between the parties concerning the services to be performed by Company. There are no promises, representations or warranties upon which either party relies other than those set forth in this Agreement. This Agreement may be modified only by a written instrument signed on behalf of Company and Facility. This Agreement does not grant Company any form of exclusive right or rights to Facility's data.

18. Attachments. The following documents are incorporated herein by this reference:

Attachment A – Price List and Monthly Minimum (as needed)

THIS AGREEMENT is executed on behalf of Company and Facility this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

COMPANY:

D & D Claims Management Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

FACILITY:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Must be Owner or Officer)

\_\_\_\_\_  
Owner, in Personal Capacity if Billing Service