

# **PNT Data Corp. Software and Services Agreement**

This Agreement (“Agreement”) is between you (the Provider or Provider organization, referred to herein as “Authorized Provider” or “you”) and PNT Data Corp. (herein referred to as “Company”). Company provides certain services, herein referred to as “the Services,” enabling Authorized Providers, as well as payers with an agreement with the Company (“Authorized Payers”), to directly exchange electronic health insurance claims and related transactions including medical billing information and clinical data (referred to collectively herein as “Authorized Transactions”) as agreed to by the Company and Authorized Payers. The Services include any access that the Authorized Provider may have to Company’s web portal in order to utilize the Services or the Software, as defined below.

Company has developed proprietary software applications, including but not limited to the Doodad™ software application, (collectively, the “Software”), for use by Authorized Providers to exchange Authorized Transactions while utilizing the Services.

The terms of this Agreement apply to any and all uses of the Software and the Services, including any revisions of the Software or new releases Company may provide in the future.

## **1. License Grant**

Company hereby grants to the Authorized Provider and the Authorized Provider accepts a nonexclusive license to use the Software and Services solely for the purposes authorized in this Agreement, subject to the following:

- If provided with a unique user name, password, and/or developer key to access and use the Software or Services, Authorized Provider is responsible for maintaining the confidentiality and the usage of such name, password and/or key, and will notify Company immediately of any of their unauthorized use.
- Authorized Provider shall not assign, sublicense, transfer, pledge, lease, rent, or share any content, right, duty or obligation granted under this license or Agreement to the Software or Services; any attempt to do so is void.
- Authorized Provider shall not copy/duplicate, modify, reverse engineer, reverse assemble, reverse compile, otherwise translate, or make derivative works based upon the Software.
- Authorized Provider shall not create Internet “links” to any part of the Software or “frame” or “mirror” any content contained in, or accessible from, the Software or any related server, wireless or Internet-based device.
- Authorized Provider shall not make use of the Services or Software to (i) build a competitive product or service; or (ii) build a product using similar ideas, features or functions.
- Authorized Provider shall not: (i) upload files that contain viruses, Trojan horses, worms, time bombs, corrupted files, or any other similar software or

programs that may damage the operation of the Software; (ii) attempt to gain unauthorized access to the Software or related systems or networks; or (iii) interfere with or disrupt the functioning of the Services or Software.

- Authorized Provider acquires no ownership interest in the Services, Software or any content obtained from Company.
- Any use of the Software or Services in violation of the above will result in immediate termination of this Agreement.
- Authorized Provider shall report to Company promptly any violation of the above by any person within Authorized Provider's control, or otherwise known or suspected, and use reasonable efforts to stop such activity.

## **2. Company's Rights**

The Software and related user documentation are proprietary products of Company protected under U.S. copyright law. All rights, title, and interest in and to the Software, including associated intellectual property rights, are and shall remain with the Company. This Agreement does not convey to the Authorized Provider an interest in or to the Software, other than a limited and revocable right of use exclusively for the purposes of this Agreement.

## **3. License Fees**

The Software or Service is provided to Authorized Providers subject to participation requirements established by the Company and Authorized Payers. It is understood that Authorized Payers are not a party to this Agreement. Upon Authorized Provider's election to exchange "Authorized Transactions" with an Authorized Payer, (during the online enrollment process), Authorized Provider may be required to agree to terms and conditions established by the Authorized Payer related to the exchange of Authorized Transactions.

## **4. Term**

By signing below, or upon Authorized Provider's first use of the Software or Service, the terms and conditions of this Agreement, (as modified by the Company from time to time, in accordance with the provisions herein), shall be applicable to each and every use of the Software or Service by the Authorized Provider. The Authorized Provider is under no continuing obligation to use the Services. However, the terms and conditions of this Agreement shall remain in effect with respect to all prior uses of the Services.

## **5. No Waiver**

The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches. If any term or provision of this Agreement or the application thereof is deemed to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## **6. Amendments**

This Agreement may be amended by Company, from time to time, by publishing such amendments to this Agreement in "Operating Rules" distributed by Company via the Software. Continued use of the Services after the publication of such amendments to this Agreement in the Operating Rules, shall constitute Authorized Provider's agreement to such amendment. Accordingly, this Agreement and any Operating Rules shall constitute the entire Agreement between Company and Authorized Provider, and supersede all prior communications and agreements. This Agreement shall be binding upon Company, its successors and assigns.

### **7. Test Data and Listing**

Authorized Provider agrees to provide to Company on a timely basis all information, reasonable assistance, and test data required by Company to facilitate Authorized Provider's use of the Software and access to the Services covered by this Agreement. Furthermore, Company shall be permitted to list Authorized Provider on its website.

### **8. Supporting Infrastructure and Internet Access**

Authorized Provider is responsible for obtaining and installing computer components and Internet telecommunication services, including an email account, necessary to access and utilize the Services. Failure to obtain or install such components and services will delay or prevent access to the Services.

### **9. Group Authorization**

In the event that this Agreement is accepted on behalf of a group of Providers, you certify that such Providers have reviewed and agreed to the terms of this Agreement and that you have legal authority to enter into this Agreement on behalf of all of the Providers.

### **10. Valid Claims and Data**

Authorized Provider acknowledges: (i) that certain claims, including but not limited to claims under the Medicare, Medicaid and Federal Employees Health Benefits ("FEHB") programs, are paid from Government funds; (ii) that misrepresentations on such claims are punishable under law; and (iii) that the Software functions merely as a conduit with respect to the Services and (iv) that Company has no knowledge regarding the underlying validity of any exchange of Authorized Transactions. Authorized Provider further certifies, to the best of its knowledge, information and belief: (i) that Authorized Provider shall exchange with Authorized Payers only legitimate authorized transaction information; and (ii) that all such information submitted shall be completely free of misrepresentations and/or falsifications.

### **11. Confidential Information**

Neither Company nor its employees, agents, or subcontractors shall disclose to any person or entity not a party to this Agreement, any personal and/or medical information, herein referred to as "confidential information," including but not limited to names, social security numbers, tax identification numbers, provider numbers, and addresses, which Company receives from any source by reason of this Agreement, except as required by law or for the exclusive purpose of fulfilling the terms of this Agreement in accordance with applicable law. Notwithstanding the foregoing, Company shall be permitted to

disclose confidential information: (i) to non-parties who are legally bound to hold such information as confidential and who utilize such information for the sole purpose of carrying out the terms of this Agreement; (ii) to other non-parties, pursuant to Authorized Provider's written authorization; and (iii) to other organizations, such as Authorized Payers that are parties to (a) an Agreement with Company and (b) an agreement with Authorized Provider authorizing such organization to receive confidential information from Authorized Provider. Neither Company nor its employees, directors or agents shall use confidential information for any other purpose other than as necessary to carry out the terms of this Agreement. Company shall not be responsible for the Authorized Provider's direct disclosure of any information to a third-party.

## **12. HIPAA Security and Privacy**

Company shall comply with all applicable laws, rules and regulations, including, without limitation, the Health Insurance Portability and Accountability Act ("HIPAA") and all other laws, rules and regulations regarding patient confidentiality. Without limiting the generality of the foregoing, Company shall: (i) only use Protected Health Information in accordance with this Agreement; (ii) use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted or required by law and this Agreement or as otherwise required by law; (iii) report to Authorized Provider, as soon as reasonably possible, any unauthorized use or disclosure of Protected Health Information obtained pursuant to this Agreement of which Company becomes aware; (iv) ensure that any agents of Company, who receive Protected Health Information from Company under this Agreement, agree to the same restrictions and conditions regarding such Protected Health Information as provided in this Agreement; (v) to the extent applicable, make available Protected Health Information in accordance with 45 CFR Section 164.524; (vi) to the extent applicable, make available the information required to provide an accounting of disclosures in accordance with 45 CFR Section 164.528; (vii) to the extent applicable, make available the Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 CFR 164.526; (viii) make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by such party under this Agreement available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with HIPAA; and (ix) upon the termination of this Agreement, if feasible, return or destroy all Protected Health Information received from or created or received by Authorized Provider under this Agreement that Company still maintains in any form, and retain no copies of such information, or, if such return or destruction is not feasible, extend the protection of this Agreement to such information and limit further use and disclosures to those purposes that make the return or destruction of the information infeasible.

**13. NOTWITHSTANDING SECTIONS 11 AND 12 ABOVE, AUTHORIZED PROVIDER ACKNOWLEDGES THAT (A) COMPANY MAY USE AND STORE ELECTROINIC PROTECTED HEALTH INFORMATION ON IT'S SERVERS AS NECESSARY TO PROVIDE SERVICES TO OR FOR COMPANY'S CUSTOMERS AND (B) COMPANY RETAINS A RIGHT TO MAINTAIN, COMBINE AND USE FULLY DE-IDENTIFIED AND**

**AGGREGATED PATIENT OR MEMBER DATA, OR INFORMATION DERIVED FROM SUCH DATA, FOR RESEARCH AND ANY OTHER PURPOSE NOT PROHIBITED BY HIPAA OR OTHER APPLICABLE LAW.**

**14. Effective Date and Termination**

This Agreement shall be effective as of the date on which Authorized Provider accepts this Agreement and shall continue for so long as the Authorized Provider continues to use the Services. However, Company may terminate this Agreement, and suspend Authorized Provider's use of and access to the Software and Services, temporarily or permanently, and with or without notice, upon Company's determination that Authorized Provider has, or may have, breached any provisions of this Agreement. Company may, in its discretion, provide Authorized Provider with an opportunity to cure an alleged breach within thirty (30) calendar days of notice." Notice of termination under this Section shall be made in accordance with Section 14 below. Furthermore, Sections 16 - 19 shall survive termination of this Agreement.

**15. Notices**

All notices required or permitted under this Agreement shall be in writing and shall be deemed to be effective: (i) when delivered by personal service; (ii) when delivered by telecopy/fax or overnight mail; (iii) upon being deposited in the United States Postal Service, postage prepaid and registered or certified with return receipt requested, to the addresses designated in the signature paragraph of this Agreement, or to such other addresses as may be designated in writing by the parties; or (iv) when the Authorized Provider first signs-on to utilize the Services after the time a notice is published by Company via the Software .

**16. Prohibited Use**

Authorized Provider shall not use the Software or the Services for any activity which is prohibited by law, or publish via the Software or the Services any content which violates or infringes upon the rights of any others or which is abusive, profane, or which, without the approval of Company, contains any advertising or any solicitation to use goods or services. Any such use of the Services will result in immediate termination notwithstanding the notice requirements set forth elsewhere in this Agreement. Company reserves the right in its sole discretion, to manage any content appearing on, or as a part of, the Software or the Services.

**17. Indemnification**

Company is not responsible for any violations by Authorized Provider of any federal, state, or local law, regulation or order, or term of this Agreement or of any agreement or arrangement between Authorized Provider and any Authorized Payer, patient or other third party.". Authorized Provider agrees to indemnify Company with respect to any damages, expenses or attorney's fees incurred by Company, related to any such violations for which Authorized Provider is responsible. THIS INDEMNIFICATION DOES NOT CONCERN THE ACTUAL RENDERING OF MEDICAL SERVICES TO PATIENTS

AND DOES NOT OBVIATE ANY MEDICAL MALPRACTICE INSURANCE POLICIES COVERING PROVIDERS OF MEDICAL SERVICES.

### **18. No Warranties**

Company MAKES NO WARRANTY, EXPRESS OR IMPLIED, FOR THE SOFTWARE OR THE SERVICES HEREUNDER. Authorized Provider further acknowledges, agrees and understands that it is responsible for: (1) backing up its own data; (2) reviewing and reconciling all reports relating to the Services and that failure to review and reconcile such reports could result in non-payment of claims by a payer(s); and, (3) obtaining, completing, filing and confirming any contractual requirements of Authorized Payers and that failure to comply with these requirements will delay or prevent access to the Services.

COMPANY WILL ENDEAVOR TO PROVIDE THE HIGHEST QUALITY SERVICES UNDER THIS AGREEMENT. WITH THE EXCEPTION OF THE WARRANTIES EXPRESSLY STATED ELSEWHERE HEREIN, NEITHER Company, NOR ANY OF ITS INFORMATION PROVIDERS, LICENSEES, LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE SERVICES ARE DISTRIBUTED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE INCAPABLE OF EXCLUSION UNDER APPLICABLE LAW. NEITHER Company NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES COVERED BY THIS AGREEMENT SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SERVICES PROVIDED UNDER THIS CONTRACT, INCLUDING DELIVERY OF THIRD PARTY CONTENT. THE AUTHORIZED PROVIDER SHALL ASSUME THE ENTIRE RISK OF USING THE SERVICES. COMPANY DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS AN AUTHORIZED PROVIDER MAY OBTAIN BY USING THE SERVICES OR RELATED SOFTWARE. COMPANY SHALL NOT BE LIABLE FOR THE CORRECTNESS OR QUALITY OF AUTHORIZED TRANSACTIONS EXCHANGED WITH AUTHORIZED PAYERS. COMPANY CANNOT WARRANT THAT AUTHORIZED TRANSACTIONS EXCHANGED WITH AUTHORIZED PAYERS WILL BE PROCESSED OR ADJUDICATED BY AUTHORIZED PAYERS. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING THE TIMEFRAMES INVOLVED FOR PROCESSING AUTHORIZED PROVIDER CLAIMS EXCHANGED VIA THE SERVICES WITH AUTHORIZED PAYERS.

### **19. Choice of Law**

This Agreement shall be interpreted and governed in accordance with the laws of the state of Connecticut. It may not be modified except as provided herein. If any provision of this Agreement is declared to be invalid or against public policy, the other provisions shall remain in full force and effect.

**20. Accept or Decline**

I understand and acknowledge that by signing this Agreement in the space provided below, I evidence my intent to be legally bound by all terms of this Agreement. If "Authorized Provider" is an entity, you represent that you have authority to sign on behalf of and bind this entity.

Authorized Provider Name: \_\_\_\_\_

Name of Signatory (if Different from Authorized Provider: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_