



## AGREEMENT FOR SERVICES

1. According to the terms of this Agreement, Insurance Benefit Spot Check, Inc. (Company) will furnish Subscriber with the SPOTCHECK® system of insurance benefits verification services and other related services the Company has established.
2. With respect to point-of-service terminals, Subscriber is responsible, at its cost, for connection to compatible telephone access lines, including dedicated telephone lines, if necessary. Subscriber will be responsible for preparation of its site for the SPOTCHECK equipment and regular expenses for installation and maintenance of telephone lines. Except as covered under the maintenance agreement for such equipment as set forth in the attached "Schedule A", after delivery of equipment by Company, Subscriber shall be responsible for and bear any and all loss or damage to such equipment, and any insurance thereon shall be at the expense of Subscriber.

With respect to the PC and Internet product, Subscriber is responsible, at its cost, for supplying and maintaining its own systems used to create, transmit, and receive eligibility request files to be processed by the Company.

3. Subscriber shall pay to Company all charges set forth in this Agreement for Services as noted on Schedule A. Subscriber agrees to pay for the services according to the usage identified by Company's computer system. If Subscriber objects to any such charges it shall make such objection in writing within twenty (20) days of notification of the amounts due. In addition, Subscriber will be charged all federal, state, and local taxes that are applicable based upon the services provided to Subscriber.
4. Company will provide to Subscriber an instruction manual to assist Subscriber in operation of the SPOTCHECK system, in order to gain maximum use of the SPOTCHECK system's capabilities.
5. Company will provide a 24-hour per day support desk service to assist Subscriber with any problems relating to use of the SPOTCHECK system.
6. Subscriber acknowledges that the terminals purchased constitute personal property. To the extent that such equipment is subject to personal property ad valorem taxes, assessments or fees, Subscriber shall be responsible therefor.
7. Company may bill Subscriber monthly for all charges incurred by Subscriber and the services provided for under the terms of this agreement. Subscriber agrees to pay Company upon receipt of each monthly invoice and to further pay one percent (1.0%) per month service charge or the maximum amount allowed by law, whichever is less, on all invoices not paid within 30 days following receipt of invoice. If any invoice, as provided in section 3 above, is in dispute no penalties will be assessed on the disputed amount during the period of dispute. In the event that any invoices are not timely paid as provided for herein and if Subscriber has not tendered full payment within ten (10) days of Company's written demand therefor, Company may, in addition to any other rights or remedies it may have under this agreement or at law, terminate this agreement and Subscriber's use of the SPOTCHECK system.
8. Either party upon 30 days advance written notice may terminate this Agreement. Subscriber acknowledges that it remains obligated

to pay any sums due Company, even if there should be a termination of this agreement. Company shall have the right to adjust prices for any of the services it provides with 90 days written notice.

9. Notwithstanding any other provision of this Agreement, or the prices set forth in the Attachment hereto, Company shall have the right to increase its fees and charges paid by Subscriber to offset any increase in rates charged by the communications common carriers and/or network time sharing suppliers. During the first year of this contract, any such increase shall become effective 90 days from the giving of written notice and thereafter any such increase shall become effective on the same day of the increase in rates charged by the communications common carrier or the network time sharing supplier becomes effective, without prior written notice to Subscriber. Company will make all reasonable efforts to notify Subscriber of such pricing changes on a timely basis.

10. Limitations of liability and exclusion of services:

- a. Company shall not be liable for failure to provide services under this agreement if such failure is due to any cause or condition beyond its control, such causes or conditions including, but not be limited to, acts of God or the public enemy, acts of government, fires, floods, earthquakes, epidemics, quarantine restrictions, unusually severe weather, electrical power failures, operational failures, computer malfunctions, or other causes or events not within the control of Company.
- b. Company shall have no obligation to provide services that would be rendered necessary because of modifications to or adjustments of the SPOTCHECK equipment without prior Company approval, or by virtue of the SPOTCHECK equipment being subjected to physical, electrical, or general environmental conditions not conducive to the proper functioning of the equipment, including but not limited to connection of the equipment to devices of peripherals not normally supplied or recommended by Company, neglect, misuse, failure to maintain adequate air circulation and control humidity within the environment.
- c. Company shall have no liability for services rendered necessary by use with the equipment of consumable materials, including but not limited to ribbons and paper for printer devices, other than those qualified and recommended by Company.
- d. Company agrees to use its best efforts to provide prompt and efficient service at all times; however, company makes no warranties or representations regarding its services except as specifically stated in this subparagraph. Company shall use due care in processing all works submitted to it by Subscriber and agrees that it will, at its expense, correct any errors which are due solely to malfunction of computers, operating systems, programs, or errors by Company employees or its agents. Correction shall be limited to a re-running of the job or jobs and/or recreating of data or program files. Company shall not be responsible in any manner for errors or failures to proprietary systems, programs, software or operational systems. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER



WARRANTIES, AND SUBSCRIBER HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE.

- e. Should there be any failure of performance or errors or omissions with respect to the information being transmitted, Company's liability shall be limited to using its best efforts to correct such failure of performance or errors or omissions. In no event, except as specifically set forth herein, shall Company be liable to Subscriber or any third parties, including Subscriber's patients/customers, for any claim, loss or damage, ordinary, special or consequential, or otherwise, even if Company has received notice of the possibility of such damage.
  - f. Due to the nature of the services being provided by Company, it is agreed that in no event will Company be liable for any claim, loss, liability, correction, cost, damage or expense caused by Company's performance or failure to perform hereunder which is not reported by Subscriber within thirty (30) days of such failure to perform.
  - g. Subscriber shall indemnify and hold Company harmless from and against any and all claims, loss, damage or expense assessed against Company by third parties and arising out of information provided to Company by Subscriber or other persons at Subscriber's request, or to officers, employees and agents of Subscriber.
  - h. Liability of Company in any and all of the categories and for any and all of the causes arising out of this agreement shall not exceed, in the aggregate, one (1) month's average billing to Subscriber taken over the twelve (12) months proceeding the month in which the damage or injuries alleged to have occurred, or if this agreement has been in effect for less than twelve (12) months, then over the average billing for the number of months in which this agreement has been in effect.
  - i. Subscriber acknowledges that all transactions are subject to information outside Company's control, which information may not be accurate. Company shall not be liable for the failure or error in communications by any insurance company, credit card company or financial institution of the verification, authorizations or responses to inquiries directed to it through use of the SPOTCHECK system. Subscriber is responsible, at its costs, for any use of the SPOTCHECK system, even where there is a subsequent cancellation, modification or amendment to the information provided through use of the SPOTCHECK system by any insurance company or Subscriber, or their respective agents. Subscriber acknowledges that acceptance of the transaction by or responses through a SPOTCHECK system do not guarantee payment for any services provided by Subscriber to its patients. Due to normal lag time in availability of membership information, many health plans do not guarantee that any person is eligible for benefits. All information given to providers on computer screens is subject to change. Eligibility may change or end before services are rendered.
11. Company maintains the right, at its sole discretion, to subcontract any or all of the services to be provided pursuant to this agreement through the use of an employee, agent, or independent contractor.
  12. Subscriber acknowledges that Company and others have developed the terminal, software and design criteria for the services set forth in this agreement, and that such information is proprietary in nature, and cannot be copied, sold, licensed, or assigned by Subscriber, its agents, or employees. Company, and independent contractors selected by Company, maintain their respective rights to patents, trademarks, service marks and copyrights to the extent of their respective rights therein. Subscriber shall not disclose or attempt to disclose any such proprietary and confidential information to any party.
  13. Subscriber may not assign, delegate or otherwise transfer any of its rights or responsibilities under this agreement, in whole or in part, without the express written consent of Company, which consent Company will not unreasonably withhold from Subscriber. Any purported assignment, delegation or transfer, including by operation of law, shall be void except as herein above stated.
  14. Any and all notices, requests, consents and other communications required or permitted to be given hereunder shall be made in writing, and shall be personally delivered or mailed postage prepaid. Until otherwise notified, notices directed to Company and Subscriber shall be directed to the principal office address specified in the signature section below. Notices shall be deemed effective upon the date of personal delivery or three (3) days after deposit in the mail.
  15. In the event of any claim or litigation between the parties hereto of their successors and assigns, concerning any provision of this agreement, or the rights, duties and obligations of any party hereto, their successors and assigns, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred by reason of such claim or litigation.
  16. The invalidity or illegality, in whole or in part, of any paragraph or provision of this agreement shall in no way affect the validity of any other paragraph or provision herein.
  17. This Agreement shall be governed by and interpreted under the laws of the State of California. The parties agree that this Agreement is entered into at and its place of performance is Sacramento, California.
  18. This Agreement, including any contractual documents such as Schedules, Appendixes, Agreements, Applications, and other required forms included with the Application package, express the final, complete and exclusive agreement of the parties relative to the subject matter hereof, and replace any and all former agreements, verbal or written understandings, solicitations, offers, and representations relating to Company's performance in connection with this agreement.
  19. Notwithstanding usage of the trade or practices in the computer industry, insurance or medical field, except as expressly provided herein, this Agreement and any provision thereunder may only be waived, modified or amended by written instrument executed by the party against whom the enforcement of such waiver, modification or amendment is sought.
  20. CONFIDENTIALITY: Subscriber, its employees, vendors and clients recognize, acknowledge, and hereby agree that all information or data provided through the SPOTCHECK Network will be treated as confidential and proprietary and shall not be used or disclosed, in whole or part, to any person, firm, corporation, association, or other entity, except as provided for in this Agreement. Subscriber further



agrees to abide by the provision of state and federal statutes and Medicaid and Medicare regulations regarding confidentiality. Subscriber access to eligibility information is hereby restricted for the sole purpose of obtaining eligibility verification for patients and potential patients of Subscriber requesting medical services covered by Medicaid or Medicare or any other Health Plan or Proprietary Database offered through the SPOTCHECK Network.

- 21. Company and Subscriber further agree that each shall, without limitation,
  - a. Not use or further disclose Protected Health Information other than as permitted or required by this Agreement;
  - b. Not use or further disclose any Protected Health Information in a manner that would violate the requirements of applicable law, including but not limited to HIPAA and its implementing regulations;
  - c. Use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided in this agreement;
  - d. Immediately report to Company or Subscriber, as the case may be, any use or disclosure of Protected Health Information not provided in this Agreement of which Company or Subscriber becomes aware;
  - e. Ensure that any sub-contractor or agent to whom Company or Subscriber provides Protected Health Insurance Information agrees in writing to the same restrictions and conditions applying to Company and

Subscriber in this section;

- f. Make such Protected Health Information available for inspection and copying by the subjects thereof in accordance with applicable law (including but not limited to HIPAA);
- g. Make Company and Subscriber's internal practices, books and records relating to the use and disclosure of Protected Health Information available to the secretary of the United States' Department of Health and Human services and any other governmental agencies for purposes of determining Company and Subscriber's compliance with applicable law (including but not limited to HIPAA) provided however, that in all events, Company and Subscriber, as the case may be, shall immediately notify the other upon receipt of any such requests, and shall provide the other with a copy of such requests and of all material disclosed in response thereto;

For the purposes of this section 22, the following terms shall be defined as follows:

"Protected Health Information" means any individually identifiable health information that is transmitted by electronic media or maintained in any electronic medium or transmitted or maintained in any other form or medium.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and any Federal Regulations adopted pursuant thereto.

WHEREFORE, the parties set their hands by their duly authorized representatives.

**SUBSCRIBER**

**INSURANCE BENEFIT SPOT CHECK, INC.**

Address:

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\_\_\_\_\_

1010 Hurley Way, Suite 180  
Sacramento, CA 95825

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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