

## **INFRASTRUCTURE SUPPORT & MAINTENANCE AGREEMENT**

This *Infrastructure Support & Maintenance Agreement – ISMA* – (the “Agreement”), is made this 25<sup>th</sup> day of November, 2012, by and between **Clinigrate, LLC** (the “Company”) and **<Practice Name>** (the “Customer”), herein collectively referred to as the “Parties”. The Parties hereby agree as follows:

### **I. SERVICES**

**1.01** The Company shall provide the Basic Hardware & Network support Services as set forth in the Standard Schedule of Services, included with this Agreement.

**1.02** The Services shall be performed by the Company at the location(s) which are designated by the Customer.

**1.03** Customer shall make available such information, facilities, and services as are reasonable for the performance of the obligation under this Agreement. The Company hereby agrees that it shall comply with the Customer’s security and confidentiality rules.

### **II. EXCLUSIONS TO SERVICES**

**2.01** Repairing damage resulting from causes other than ordinary wear and tear, including without limitation, neglect, misuse, accidents, failure of electrical power, or acts of God.

**2.02** In the event that Customer requires service, repair or maintenance to Equipment that is excluded from Services due to any of the occurrence in Article 2.01, Customer may request that Company provide a quote for the required services, repairs, or maintenance. The Parties may thereafter agree in writing to any such service, repairs or maintenance by Customer’s signature on provided quote.

**2.03** Hardware purchased by the client, without consultation with Clinigrate, is not considered part of this agreement with regard to service and support. Consultations regarding any hardware selection and purchase are always at NO CHARGE, and ensure equipment compatibility with your system.

**2.04** Any changes made to hardware or network components, by third-party companies, are not permitted and may invalidate the service and support coverage and/or this Agreement in its entirety, at the sole discretion of Clinigrate, LLC or their agents.

### **III. FEES**

**3.01** The Customer agrees to pay the Company for Basic Hardware & Network Support Services as follows for the Agreement period. This amount will be paid (circle one): **Annually** **Quarterly** **Monthly**. Quarterly and Monthly payments REQUIRE automatic credit card charges made by the Company on an account provided by the Customer.

**3.02** The total sum of this Agreement shall be the total of a, b, & c below. Check desired options.

- a)  **Basic Infrastructure Support & Maintenance Agreement (required) \$ 4,484.00**  
(See ISMA Schedule of Services – attached – for purchased coverage details)
- b)  **Extended After-hours Emergency Remote Support \$500.00**
- c) **Prepaid Trip Charge Package - Metro Atlanta Area ONLY (choose one—paid in full):**  
 **5-hour \$350.00**     **10-hour \$650.00**     **25-hour \$1,500.00**

**Grand Total: \$ \_\_\_\_\_**      Add a, b, & c above ONLY

**3.03** **<Practice Name>** agrees to pay the Company the Grand Total amount no later than **12/31/2012**. Payment shall be made by (circle one choice): **Credit Card** **Check** made out to Clinigrate, LLC and mailed to 1400 Market Place Blvd, Suite 152, Cumming, GA 30041.

**3.04** All on-site visits will be charged, based on the Trip Charge Plan as indicated in the Standard Schedule of Services.

#### **IV. TERM**

**4.01** This Agreement shall commence on the 24<sup>th</sup> day of December, 2012 and shall terminate on the 24<sup>th</sup> day of December, 2013.

#### **V. TERMINATION OF AGREEMENT**

**5.01** The following events shall constitute a breach of the Agreement by the party responsible for the occurrence of such event.

- a. If either Party to this Agreement is in breach of any of its obligations under this Agreement; or
- b. If either Party to this Agreement or their respective employees engage in any fraudulent or illegal activity; or
- c. If either Party to this Agreement becomes insolvent, bankrupt, is a party subject to bankruptcy protections, or makes an assignment for the benefit of creditors, or a receiver is appointed of its business

**5.02** The non-defaulting Party shall give a notice in writing of the breach to the defaulting Party and request the latter to remedy it. If the defaulting Party fails to cure the breach within 14 days after the date of written notice, then this Agreement may be terminated immediately by the non-defaulting Party by written notice of termination delivered to the defaulting Party. In the event that Company executes a termination of this agreement, only a pro-rated unused balance of the Basic Agreement amount will be refunded to Customer. If the Customer executes a termination, no more than 20 percent of the unused balance will be refunded.

#### **VI. WARRANTY**

**6.01** The Company warrants to the Customer that under normal conditions that the Services contemplated under this Agreement shall be free from defects in workmanship.

**6.02** The Services and materials provided by the Company to the Customer under this Agreement will not infringe on or violate any intellectual property rights or other rights of any third party.

**6.03** The Customer warrants that the Company is authorized to access the servers, computers, networks, materials, and information which Customer makes available or accessible to the Company, and warrants any information provided to Company, whether for use on Customer's website, e-mails, or otherwise intended to be viewed or be able to be viewed by third parties, is the property of Customer's or that Customer has express authority an rights to communicate said information.

#### **VII. GENERAL PROVISIONS**

**7.01** The Agreement may be amended from time to time by mutual consent of the Parties. All amendments shall be set forth in writing and signed by the Parties. As the case may be, no variation or amendment so made shall be effective prior to the date of its recording in a written instrument duly executed by the Parties and attached to this Agreement.

**7.02** The Agreement may be signed in several counterparts, each of which, when so signed, shall be deemed to be an original. Such counterparts shall, however, represent one and the same document. Furthermore, the Parties agree that this Agreement may be transmitted by facsimile, e-mail or similar forms of communication, and that the signatures incorporated in such transmissions shall be treated as originals. Any notices or other communications required or permitted by this Agreement shall be in writing and shall be considered delivered when given in any of the prescribed methods (above) to the listed addresses.

**7.03** This Agreement shall be deemed to constitute a contract made and entered into under the laws of the State of Georgia, and for all purposes this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without giving effect to the choice of laws provisions thereof. Any litigation arising directly or indirectly from a dispute under the Agreement shall be litigated solely in the Superior Court of Forsyth County, Georgia, and the Parties hereby expressly agree to submit to the personal jurisdiction of that Court for that purpose.

**7.04** If any term, covenant, condition, or provision of this Agreement, or the application of them to any circumstances is, at any time or to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement or its application to circumstances other than those to which it is held invalid or unenforceable shall not be affected, and each term, covenant, condition, and provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

**7.05** This Agreement and the attachments hereto constitute the entire agreement between the Parties and fully supersede and cancel any and all prior agreements, understandings, commitments, negotiations, or representations between, among, or by the Parties relating to the subject matter of this Agreement. The provisions of this Agreement are contractual. This Agreement has been the subject of negotiations and discussions between and among the Parties. It has been and shall be construed to have been drafted by all the Parties, so that any rule of construing ambiguities against the drafter shall have no force and effect.

**7.06** The Company and Customer incorporate the Terms of the Business Associate HIPAA Agreement as if set forth fully herein and the provisions of this article shall survive the termination of this Agreement.

**VIII. DISPUTE RESOLUTION**

**8.01** Should a dispute arise between the Company and the Customer regarding the interpretation or construction of, compliance with, or breach of, the Agreement or its termination, the Company and the Customer shall meet and negotiate in good faith in an attempt to resolve the dispute.

**8.02** If the dispute cannot be resolved through good faith negotiations between the Company and the Customer within a reasonable time, the Company and the Customer agree that such dispute shall be submitted to mediation at Henning Mediation in Atlanta, Georgia. Any mediation settlement by the Company and the Customer shall be documented in writing. Should such mediation settlement vary the language of the Agreement, the variation shall be recorded in writing, signed by both the Company and the Customer and added to the Agreement as an attachment.

**8.03** If the dispute cannot be resolved through mediation within thirty (30) days following the commencement of the mediation process, the dispute shall be conclusively settled by a single arbitrator and be governed in accordance with the provisions and rules of the American Arbitration Association, and all hearings shall take place in the City of Cumming, Georgia pursuant to the laws of the State of Georgia unless agreed otherwise by the Parties.

**8.04** Any judgment, decision or award rendered by any arbitrator pursuant to this Section shall: a) be final and binding upon the Company and the Customer; b) not be the subject of any further court proceedings except in connection with the enforcement of any such award by a court of competent jurisdiction; and c) not be disclosed to third parties unless so required by law for enforcement or other purposes.

**8.05** The parties shall split the administrative costs of arbitration unless and until such time as the arbitrator determines that one party should be responsible for costs associated with the arbitration, including legal fees and disbursements of the parties. Such a determination should be based upon the language of this contract and the parties' respective conduct leading up to the dispute and during the course of any arbitration proceedings. This provision shall not be read as requiring any such award by the arbitrator.

**8.06** In the event that either party fails to perform under the terms of this Section, a party may petition the appropriate Court and seek relief either in the form of compelling the enforcement of this provision or seeking to pursue recovery based upon the underlying issues giving rise to the dispute between the parties.

**IN WITNESS WHEREOF** the Parties have hereunto set their respective hands and seals as at the date first written above.

SIGNED by )  
for and on behalf of )  
**Clinigrate, LLC** )

)   
) Daniel R. White, VP – Operations  
) 1400 Market Place Blvd., Suite 152, Cumming, GA 30041

SIGNED by )  
for and on behalf of )  
<Practice Name> )

) \_\_\_\_\_  
) Signature  
) \_\_\_\_\_  
) Print Name & Title  
) \_\_\_\_\_  
) \_\_\_\_\_  
) Complete Address – Primary Office

Please mail or fax this completed form (three pages) and selected payment option to:

**Clinigrate, 1400 Market Place Blvd., Suite 152, Cumming, Georgia 30041 – Fax (770) 881-8401**

**Credit Card Information:** Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

Name on the Card \_\_\_\_\_ CVV (Security #) \_\_\_\_\_ 3-digit number (back of Visa & MasterCard)  
4-digit number (front of AMEX)

Billing Address \_\_\_\_\_  
\_\_\_\_\_