



Agency Services Agreement

Thank you for choosing orthopatients.com to advise and implement digital marketing services exclusively for your business. We are excited to work with you to grow your number of new patient starts.

THIS AGREEMENT (the "Agreement"), is entered into on _____ by and between orthopatients.com ("The Company") a Utah, USA limited liability company, with a mailing address of 2054 E Buckingham Way, Sandy UT, and; _____, (the "Client") whose address is: _____ (collectively, the "Parties").

The Client and The Company agree as follows:

1. The Services. The services can be divided into two parts, the setup services and the ongoing management services. Both types of services are detailed below:

As part of the setup services, the company will create a robust marketing funnel. This will be done by:

- A. Create and launch Facebook™ ad campaigns
- B. Google Sheets integration
- C. Training and ongoing support

As part of the monthly ongoing management services, the company will optimize and report the status of the marketing funnel. This will be done by:

- D. Optimizing top, middle, and bottom of funnel Facebook™ ad campaigns as necessary
- E. Google sheets optimization
- F. Training and ongoing Support
- G. Fulfilling special requests by the client that pertain to their Facebook™ ad campaigns

2. Client Requirements. Client agrees to provide the following items within 2 business days of paid invoice:

A. Provide admin access to Facebook™ ad account B. Provide admin access to business Facebook™ page C. Provide access to client digital assets (pictures, videos, and previous ad designs or campaigns)

Client agrees to provide the following items monthly: D. Report the number of new consultations scheduled, consultations showed, and new patient starts.

3. Compensation and Payment.

A. Set up Fee: \$1997

B. Ongoing Management: For the Services described in Section 1 D-G, Client will pay to The Company \$1497 per month for ongoing management. The \$1497 will be due the ___ of each month and will be automatically deducted from your payment method on file each month.

C. The following provision applies to the authorization of repeated credit or debit card authorizations, only: Right to cancel: The Client has the right to cancel this contract until midnight of the third (3rd) business day after it is signed and executed. Client may cancel this agreement by emailing a written notice to The Company before midnight of the third business day. Notice of cancellation sent after this deadline may be deemed invalid at the sole discretion of The Company.

4. Term/Refund. This Agreement will commence on the effective date first set forth above and will continue for a minimum period of 90 days, regardless of the Client's delivery of content, and then will continue on a month to month basis unless otherwise terminated by The Company or Client or unless otherwise agreed to by The Company and the Client. If for any reason the Company fails to produce a positive ROI for the client, the company will issue a full refund for the first 3 months of services within the first 90 days.. (Not including Facebook ad spend)

5. Termination. This agreement may not be terminated prior to 90 days after the date shown above by either party. In the event that the Client desires to terminate the Services hereunder, the Client must submit a written request to The Company at least seven (10) days prior to the desired date of termination. Written requests to terminate may be made by e-mail. If Client chooses to terminate this agreement in writing, all monies owed to The Company will be due immediately and will be automatically charged to the Client's payment method on file.

6. Exclusivity.

As part of this agreement, The Company agrees to deny their services to any other orthodontic or dental offices within a 7-10 mile radius of the Client, whose address is listed above, during the length of the term.

7. Proprietary Information and Use of Materials.

A. Except as provided elsewhere in this Agreement, all information disclosed by one Party to the other Party, shall be deemed to be confidential and proprietary (“Proprietary Information”). Such Proprietary Information includes, without limitation, information regarding marketing, sales programs, sales volume, sales conversion rates, sales methods and processes, sales proposals, products, services, vendors, customer lists, training manuals, sales scripts, telemarketing scripts, and customer information, operating procedures, pricing policies, strategic plans, intellectual property, information about a Party’s employees and other confidential or Proprietary Information belonging to or related to a Party’s affairs. The receiving Party acknowledges and agrees that in any proceeding to enforce this Agreement it will be presumed that the Proprietary Information constitutes protectable trade secrets, and that the receiving Party will bear the burden of proving that any portion of the Proprietary Information was publicly or rightfully known and disclosed by the receiving Party. The Parties, their employees, subsidiaries, affiliates, agents, and assigns agree to hold all Proprietary Information, regardless of when or how disclosed, in strict confidence and with not less than the same degree of care that they provide for their own confidential and proprietary information. The Parties warrant and represent that the degree of care contemplated herein is adequate and the Parties will take any and all steps reasonably necessary to preserve such Proprietary Information.

B. Nothing in this Agreement shall prohibit or limit the receiving Party’s use of information that can be demonstrated as: (a) previously known to the receiving Party, (b) independently developed by the receiving Party, (c) acquired from a third party not under similar nondisclosure obligations to the disclosing Party, or (d) acquired through the public domain through no breach by the receiving Party of this Agreement.

C. License. Client grants The Company a limited, non transferable, nonexclusive license to copy, use, store, set up, publicly display, publicly perform and transmit any trade names, trademarks, service marks, copyrights, content, text, images, software, functionality, page and other design and layout, media and other materials therein and solely in connection with creation of the Campaign and direct response marketing in accordance with this Agreement. Other than as specifically provided herein, the Parties, their employees, subsidiaries, affiliates, agents and assigns, shall make no disclosure of any Proprietary Information without the express written consent of the other Party. In addition, neither Party shall use the Proprietary Information for any purpose other than purposes related to their business relationship as laid out in this Agreement. In the event that the receiving Party is required by applicable law, rule, regulation or lawful order or ruling of any court, government agency or regulatory commission to disclose any Proprietary Information, the receiving Party understands that the disclosing Party may desire to seek an appropriate protective order or take steps to protect the confidentiality of such Proprietary Information. Consequently, the receiving Party agrees that it will provide

the disclosing Party with prompt notice of such request(s).

D. **Portfolio Release.** Client agrees that The Company has the right to use materials created pursuant to this Agreement for The Company's portfolio, samples, self-promotion including advertising for The Company's business including without limitation Facebook or Instagram, or any other social media platform. In the event Client wishes to exclude some specific materials from the release under this paragraph, or to limit the time period of such release, The Company and Client may agree in writing to such limitation.

E. **Remedies.** The Parties acknowledge that the Proprietary Information exchanged is valuable and unique and that disclosure in breach of this Agreement will result in irreparable injury to the adversely affected Party, for which monetary damages, on their own, would be inadequate. Accordingly, the Parties agree the adversely affected Party shall have the right to seek an immediate injunction enjoining any such breach or threatened breach of the Agreement.

8. Additional Services. All services outside the scope of this Agreement that are requested by the Client and which The Company agrees to perform will be billed at a rate of \$200 per hour. The Client will be notified and must approve in writing (email is sufficient) additional services before they will be performed, although The Company may not necessarily be able to inform Client in advance of the total cost of such additional services. The Client will also be given opportunity to purchase additional services at package rates, when deemed appropriate by The Company.

9. Limitation of Liability. The Company shall not be liable for any incidental, consequential, indirect or special damages, or for any loss of profits or business interruptions caused or alleged to have been caused by the performance or nonperformance of the Services. Client agrees that, in the event The Company is determined to be liable for any such loss, Client's sole remedy against The Company is limited to a refund of payments made by Client for said Services, less expenses paid to subcontractors or to third parties. The Company is not responsible for errors which result from faulty or incomplete information supplied to The Company by Client. Client also agrees to not seek damages in excess of the contractually agreed upon limitations directly or indirectly through suits by or against other parties. The Company shall not be liable to Client for any costs, damages or delays due to causes beyond its control, expressly including without limitation, unknown site characteristics; changes in policies, changes in terms of services.

10. Handling of Disputes. The Parties agree that any dispute regarding this Agreement, and any claim made by Client for return of monies paid to The Company, shall be handled in accordance with applicable State and Federal laws. Specifically, if Client cancels credit card payments after the three day cancellation period permitted by law and outlined in this

Agreement, this Agreement is immediately terminated, and The Company reserves the right to dispute such cancellation and pursue Client for monies owed to The Company for services already performed but unpaid by Client due to such credit card cancellation. Client agrees that, regardless of whether Client is ultimately successful in any credit card cancellation dispute, it is liable to pay The Company for the work already performed as of the time of the cancellation request, at an hourly rate of \$200 per hour for all hours spent on Client's project. The Company will provide Client with an itemization of hours spent within a reasonable time upon the request of the Client and payment will be expected in full within 30 days from the date such itemization is provided. If Client does not pay for such hourly work upon The Company's demand and within 30 days, The Company reserves the right to initiate an action in court for breach of contract, regardless of the previous outcome of any credit card cancellation dispute. Additionally, if The Company is successful in any credit card cancellation dispute, The Company reserves the right to pursue Client for the costs The Company had incurred in disputing or defending such credit card cancellation, including but not limited to the lost business profits in the form of time The Company and its representatives spent handling such dispute, at The Company's hourly rate of \$200.

11. No Guarantee. The Company does not warrant or guarantee any specific level of performance or results. Example of results obtained for other clients of The Company may be used as a marketing tool and shown to Client for demonstrative purposes only and should not be construed by Client as indicating any promised results or level of results.

12. Entire Agreement. This Agreement is the final, complete and exclusive Agreement of the Parties. No modification of or amendment to this Agreement shall be effective unless in writing and signed by each of the Parties.

13. Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, the remaining provisions of this Agreement shall remain in full force and effect.

14. Headings. The headings used in this Agreement are for convenience only and shall not be used to limit or construe the contents of this Agreement.

15. Interpretation and Enforcement. The parties understand and agree that the construction and interpretation of this Agreement is governed by the laws of the State of Utah, USA. In the event that either party must initiate legal action to enforce this Agreement, the Parties agree that the proper venue for such action shall be the courts of the State of Utah, USA. By their signatures below, the parties hereby understand and agree to all terms and

conditions of this Agreement.

Client

Name: _____

Company: _____

Signature: _____

Date: _____

The Company

Name: Tyler Loveall

Company: Orthopatients, LLC

Signature: *Tyler Loveall*

Date:

**Credit Card Billing
Information**

Name _____

Type of Card

Card Number _____

Expiration Date _____

Security Code

Billing Address _____

Billing City _____

Billing State _____

Billing Zip _____

BUSINESS ASSOCIATE AGREEMENT - HIPAA

Covered Entity:

Name: _____

Address: _____

Service Provider:

Name: ORTHOPATIENTS, LLC

Address: 2054 BUCKINGHAM WAY, SANDY UT, 84093

IN WITNESS WHEREOF, each Party has caused the below Agreement to be executed on its behalf by a duly authorized representative on the Effective Date.

Orthopatients LLC

Covered Entity

Signature: *Tyler Loveall*

Signature: _____

Name: Tyler Loveall

Name: _____

Title: Director of Sales

Title: _____

Date:

Date: _____

This Business Associate Agreement (“Agreement”) is made and entered into as of the Effective Date and between the above-listed Covered Entity and Business Associate, with reference to the following facts:

RECITALS

WHEREAS, Business Associate has been engaged to provide services to Covered Entity pursuant to a separate Agreement (the “Services Agreement”), and, in connection with those services, Covered Entity may need to disclose to Business Associate, or Business Associate may need to create on Covered Entity’s behalf, certain Protected Health Information (as defined below) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services to implement certain privacy and security provisions of HIPAA (the “HIPAA Regulations”), codified at 45 C.F.R. Parts 160 and 164; and

WHEREAS, pursuant to the HIPAA Regulations, all business associates of Covered Entity, as a condition of doing business with Covered Entity, must agree in writing to certain mandatory provisions regarding the privacy and security of Protected Health Information (“PHI”) (as defined below).

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, and the mutual promises and covenants contained herein, Business Associate and Covered Entity agree as follows:

AGREEMENT

1. Definitions.

Unless otherwise specified in this Agreement, all terms not otherwise defined shall have the meanings established in Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. Further, capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings set forth in HIPAA, the HIPAA Regulations and the HITECH Act.

- 1.1 *Breach* shall have the meaning given to such term in 42 U.S.C. § 17921, and shall include the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information.
- 1.2 *Business Associate* shall have the meaning given to such phrase under the HIPAA Regulations and the HITECH Act, including, but not limited to, 45 C.F.R. § 160.103 and 42 U.S.C. § 17938, respectively. For purposes of this Agreement, “Business Associate” shall also refer specifically to the entity or individual set forth in the Preamble above.
- 1.3 *Covered Entity* shall have the meaning given to such phrase under the HIPAA Regulations including, but not limited to, 45 C.F.R. § 160.103. For purposes of this Agreement, “Covered Entity” shall also refer specifically to the entity set forth in the Preamble above.
- 1.4 *Data Aggregation* shall have the meaning given to such phrase under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.501.
- 1.5 *Designated Record Set* means a group of records maintained by or for Covered Entity that may include (i) medical records and billing records about Individuals maintained by or for a covered health care provider, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (iii) records used, in whole or in part, by or for Covered Entity to make decisions about Individuals.
- 1.6 *Electronic Health Record* shall have the meaning given to such phrase in the HITECH Act, including, but not limited to, 42 U.S.C. § 17921(5).
- 1.7 *Electronic Protected Health Information (“ePHI”)* means individually identifiable health information that is transmitted by, or maintained in, electronic media.
- 1.8 *Health Care Operations* shall have the meaning given to such phrase under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.501.
- 1.9 *Individual* has the same meaning as the term *individual* in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.10 *Privacy Rule* shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and as may otherwise be amended from time to time.
- 1.11 *Protected Health Information (“PHI”)* means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or

the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify that Individual; and (iii) shall include the definition as set forth in the Privacy Rule including, but not limited to, 45 C.F.R. § 160.103. For purposes of this Agreement, PHI shall include ePHI.

- 1.12 *Required By Law* shall have the same meaning as the phrase *required by law* in 45 C.F.R. § 164.103.
- 1.13 *Secretary* means the Secretary of the U.S. Department of Health and Human Services or his/her designee.
- 1.14 *Security Incident* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- 1.15 *Security Rule* shall mean the HIPAA Regulations that are codified at 45 C.F.R. Part 160 and Part 164, Subparts A and C, as amended by the HITECH Act and as may otherwise be amended from time to time.
- 1.16 *Unsecured PHI* shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in 42 U.S.C. § 17932(h).

2. Scope of Agreement.

This Agreement applies to the PHI of Covered Entity to which Business Associate may be exposed as a result of the services that Business Associate will provide to Covered Entity pursuant to the Services Agreement. Business Associate shall abide by HIPAA, the HIPAA Regulations and the HITECH Act with respect to PHI of Covered Entity, as outlined below.

3. Obligations and Activities of Business Associate.

- 3.1 *Permitted Uses.* Except as otherwise limited in this Agreement, Business Associate may use PHI (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity. Business Associate may use PHI to provide services to Covered Entity under the Services Agreement provided that Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity.
- 3.2 *Permitted Disclosures.* Business Associate may disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as Required By Law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. Business Associate may disclose PHI to provide services to Covered Entity under the Services Agreement, provided that Business Associate shall not disclose PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity.
- 3.2.1 In addition, if Business Associate discloses PHI to a third party, for Business Associate's management and administration purposes as specified in Section 3.2, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that the PHI will be held as confidential as provided pursuant to this Agreement and only disclosed as Required By Law or for the purposes for which it was disclosed to such third party; and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent such third party has obtained knowledge of such breach.

- 3.3 *Prohibited Uses and Disclosures.* Business Associate shall not use or disclose PHI for fundraising or marketing purposes. In accordance with 42 U.S.C. § 17935(a), Business Associate shall not disclose PHI to a health plan for payment or Health Care Operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and Individual and as permitted by 42 U.S.C. § 17935(d)(1) and (2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Services Agreement.
- 3.4 *Other Business Associates.* As part of its providing functions, activities, and/or services to Covered Entity, Business Associate may disclose information, including PHI, to other business associates of Covered Entity, and Business Associate may use and disclose information, including PHI, received from other business associates of Covered Entity as if this information was received from, or originated with, Covered Entity.
- 3.5 *Safeguards for Protection of ePHI.* Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. In accordance with 42 U.S.C. § 17931 of the HITECH Act, Business Associate shall be directly responsible for full compliance with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316. Business Associate shall implement and at all times use all appropriate safeguards to prevent any use or disclosure of PHI not authorized under this Agreement.
- 3.6 *Reporting of Unauthorized Uses or Disclosures and Security Incidents.* Business Associate agrees to report to Covered Entity in writing any access, use or disclosure of the PHI not provided for or permitted by this Agreement and, any Security Incidents of which Business Associate (or Business Associate's employee, officer or agent) becomes aware. Business Associate shall so notify Covered Entity pursuant to this Section within twenty-four (24) hours after Business Associate becomes aware of such unauthorized use, disclosure or Security Incident.
- 3.7 *Reporting of Breach of Unsecured PHI.* Business Associate agrees to report to Covered Entity any Breach of Unsecured PHI of which Business Associate (or Business Associate's employee, officer or agent) becomes aware without unreasonable delay and in no case later than the next business day after Business Associate learns of such Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.
- 3.8 *Agents and Subcontractors.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom Business Associate provides PHI, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI, and implement the safeguards required by Section 3.5 above with respect to ePHI.
- 3.9 *Mitigation of Unauthorized Uses or Disclosures.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or one of its agents or subcontractors in violation of the requirements of this Agreement.
- 3.10 *Authorized Access to PHI.*

- 3.10.1 *Individual Requests for Access.* Business Associate shall cooperate with Covered Entity to fulfill all requests by Individuals for access to the Individual's PHI that are approved by Covered Entity. Business Associate shall cooperate with Covered Entity in all respects necessary for Covered Entity to comply with 45 C.F.R. §164.524 and applicable State law. If Business Associate receives a request from an Individual for access to PHI, Business Associate shall immediately forward such request to Covered Entity.
- 3.10.2 *Scope of Disclosure.* Covered Entity shall be solely responsible for determining the scope of PHI and/or Designated Record Set with respect to each request by an Individual for access to PHI. In the event that Covered Entity decides to charge a reasonable cost-based fee for the reproduction and delivery of PHI to an Individual, Covered Entity shall deliver a portion of this fee to Business Associate in the event any such reproduction or delivery is made by Business Associate, and in proportion to the amount of work done by Business Associate in producing and delivering the PHI.
- 3.10.3 *Designated Record Set.* To the extent that Business Associate maintains PHI in a Designated Record Set and at the request of Covered Entity, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 and applicable State law. If Business Associate maintains PHI in a Designated Record Set, and maintains an Electronic Health Record, then Business Associate shall provide such Designated Record Set in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. § 17935(e).
- 3.10.4 *Patient Right to Amend to PHI.* A patient has the right to have Covered Entity amend his/her PHI, or a record in a Designated Record Set for as long as the PHI is maintained in the Designated Record Set, in accordance with 42 C.F.R. §164.526. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set at the request of Covered Entity in accordance with 45 C.F.R. § 164.526. Within fifteen (15) business days following Business Associate's amendment of PHI as directed by Covered Entity, Business Associate shall provide written notice to Covered Entity confirming that Business Associate has made the amendments or addenda to PHI as directed by Covered Entity and containing any other information as may be necessary for Covered Entity to provide adequate notice to the Individual in accordance with 45 C.F.R. §164.526.
- 3.11 *Accounting for Disclosures.*
- 3.11.1 *Disclosures.* In the event that Business Associate makes any disclosures of PHI that are subject to the accounting requirements of the Privacy Rule 45 C.F.R. §164.528 and/or the HITECH Act including, but not limited to, 42 U.S.C. § 17935(c))¹, Business Associate shall report such disclosures to Covered Entity within three (3) days of such disclosure. The notice by Business Associate to Covered Entity of the disclosure shall include the name of the Individual, the recipient, the reason for disclosure, and the date of the disclosure. Business Associate shall maintain a record of each such disclosure that shall include: (i) the date of the disclosure; (ii) the name and, if available, the address of the recipient of the PHI; (iii) a brief description

¹ The provisions of 42 U.S.C. § 17935(c) become effective on the following dates: (i) for users of electronic health records as of January 1, 2009, this section shall apply to disclosures made by the Covered Entity on and after January 1, 2014; (ii) for covered entities that acquire an electronic health record after January 1, 2009, this section shall apply to disclosures made by the Covered Entity after the later of January 1, 2011 or the date it acquires an electronic health record.

of the PHI disclosed; and (iv) a brief description of the purpose of the disclosure. Business Associate shall maintain this record for a period of six (6) years and make it available to Covered Entity upon request in an electronic format so that Covered Entity may meet its disclosure accounting obligations under 45 C.F.R. §164.528. If Covered Entity provides a list of its business associates to an Individual in response to a request by an Individual for an accounting of disclosures, and the Individual thereafter specifically requests an accounting of disclosures from Business Associate, then Business Associate shall provide an accounting of disclosures to such Individual.

3.11.2 *Electronic Health Record.* Business Associate acknowledges that, to the extent Business Associate maintains an Electronic Health Record for Covered Entity, Business Associate is only required to provide an Individual with an accounting of disclosures related to treatment, payment or Health Care Operations for a period of three (3) years prior to such Individual's request. Therefore, upon request by an Individual to Covered Entity for an accounting of disclosures related to treatment, payment or Health Care Operations, Business Associate shall provide to Covered Entity, within three (3) days of Business Associate's receipt of a written request from Covered Entity, an accounting of such disclosures for the three (3) year period prior to such request. Notwithstanding this Section, a record of disclosures pertaining to information disclosed by Business Associate for treatment, payment or Health Care Operations shall be maintained in accordance with Section 3.11.1, above.

3.12 *Secretary's Right to Audit.* Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of the Secretary determining Covered Entity's and/or Business Associate's compliance with HIPAA, the HIPAA Regulations and the HITECH Act. No attorney-client, or other legal privilege will be deemed to have been waived by Business Associate by virtue of this provision of the Agreement. Business Associate shall provide to Covered Entity a copy of any PHI and related documents that Business Associate provides to the Secretary concurrently with providing such documents to the Secretary.

3.13 *Data Ownership.* All PHI shall be deemed owned by Covered Entity unless otherwise agreed in writing.

3.14 *Compliance.* To the extent Business Associate is to carry out a Covered Entity's obligation under the HIPAA Privacy Regulations, Business Associate shall comply with the requirements of the Privacy Regulations that apply to Covered Entity in the performance of such obligation.

4. Obligations of Covered Entity.

4.1 *Notice of Privacy Practices.* Upon written request by Business Associate, Covered Entity shall provide Business Associate with Covered Entity's then current Notice of Privacy Practices.

4.2 *Revocation of Permitted Use or Disclosure of PHI.* Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by the patient to use or disclose PHI of Covered Entity, to the extent that such changes may affect Business Associate's use or disclosure of PHI of Covered Entity.

4.3 *Restrictions on Use or Disclosure of PHI.* Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- 4.4 *Requested Uses or Disclosures of PHI.* Except for Data Aggregation or management and administrative activities of Business Associate, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity.

5. Term and Termination.

- 5.1 *Term.* The term of this Agreement shall be coterminous with the Services Agreement. However, Business Associate shall have a continuing obligation to safeguard the confidentiality of PHI received from Covered Entity after the termination of the Services Agreement.
- 5.2 *Termination Without Cause.* Either party may terminate this Agreement in accordance with the terms and provisions of the Services Agreement.
- 5.3 *Termination for Cause.* A breach of any provision of this Agreement by Business Associate shall constitute a material breach of this Agreement and shall provide grounds for immediate termination of this Agreement by Covered Entity, any provision in this Agreement to the contrary notwithstanding.
- 5.4 *Judicial or Administrative Proceedings.* Either party may terminate the Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations, the HITECH Act or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- 5.5 *Effect of Termination.*
- 5.5.1 Except as provided in Section 5.5.2, herein, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, including PHI in possession of any Business Associate's subcontractors and retain no copies or backup records of such PHI in any form or medium. Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- 5.5.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI unfeasible, for so long as Business Associate maintains such PHI.

6. Breach Pattern or Practice.

If either party (the "Non-Breaching Party") knows of a pattern of activity or practice of the other party (the "Breaching Party") that constitutes a material breach or violation of the Breaching Party's obligations under this Agreement, the Non-Breaching Party shall either (i) terminate this Agreement in accordance with Section 5 above, or (ii) take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Non-Breaching Party must terminate the Agreement if feasible. The Non-Breaching Party shall provide written notice to the Breaching Party of any pattern of activity or practice of the Breaching Party that the Non-Breaching Party believes constitutes a material breach or violation of the Breaching Party's obligations under this Agreement within three (3) days of discovery and shall meet with the Breaching Party's Privacy Coordinator to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

7. Disclaimer.

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, the HIPAA Regulations, or the HITECH Act will be adequate or

satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

8. Certification.

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligation pursuant to HIPAA, the HIPAA Regulations, and the HITECH Act, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures (including but not limited to review of training procedures for Business Associate's staff) and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Regulations, the HITECH Act, and this Agreement.

9. Indemnification.

Notwithstanding any contrary provision in the Services Agreement, Business Associate agrees to indemnify, defend and hold harmless Covered Entity, its shareholders, directors, officers, employees, affiliates, and agents ("Indemnified Party") against all actual and direct losses suffered by the Indemnified Party from any breach of this Agreement, negligence or wrongful acts or omissions, including, without limitation, failure to perform its obligations under this Agreement or Breach of Unsecured PHI, by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse the Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be incurred by Indemnified Party or imposed upon the Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party, as a result of the Business Associate's breach hereunder.

10. Compliance With State Law.

Business Associate acknowledges that Business Associate and Covered Entity may have confidentiality and privacy obligations under applicable State law. If any provisions of this Agreement or HIPAA/HIPAA Regulations/HITECH Act conflict with state law regarding the degree of protection provided for PHI and patient medical records, then Business Associate shall comply with the more restrictive requirements.

11. Miscellaneous.

11.1 Amendment. Business Associate and Covered Entity agree to take such action as is necessary to amend this Agreement from time to time to enable Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations and the HITECH Act. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by Business Associate and Covered Entity.

11.2 Interpretation. The provisions of this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HIPAA Regulations, the HITECH Act, the Privacy Rule and the Security Rule.

11.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Business Associate and Covered Entity, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

11.4 Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered (i) when delivered personally, against written receipt; (ii) if sent by registered or certified mail, return receipt

requested, postage prepaid, when received; (iii) when received by facsimile transmission; or (iv) when delivered by a nationally recognized overnight courier service, prepaid, and shall be sent to the addresses set forth on the signature page of this Agreement or at such other address as each party may designate by written notice to the other by following this notice procedure.

- 11.5 *Regulatory References.* A reference in this Agreement to a section in the HIPAA Regulations or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- 11.6 *Assistance in Litigation or Administrative Proceedings.* Business Associate shall make itself, and any subcontractors, employees or agents, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- 11.7 *Subpoenas.* In the event that Business Associate receives a subpoena or similar notice or request from any judicial, administrative or other party arising out of or in connection with this Agreement, including, but not limited to, any unauthorized use or disclosure of PHI, Business Associate shall promptly forward a copy of such subpoena, notice or request to Covered Entity and afford Covered Entity the opportunity to exercise any rights it may have under law.
- 11.8 *Survival.* The respective rights and obligations of Business Associate under Section 3 et seq. of this Agreement shall survive the termination of this Agreement. In addition, Section 5.5 (Effect of Termination), Section 7 (Disclaimer), Section 9 (Indemnification), Section 10 (Compliance with State Law), Section 11.4 (Notices), Section 11.6 (Assistance in Litigation and Administrative Proceedings), Section 11.7 (Subpoenas), and Section 11.9 (Governing Law) shall survive the termination of this Agreement.
- 11.9 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the state in which the covered entity is principally located to the extent that the provisions of HIPAA, the HIPAA Regulations or the HITECH Act do not preempt the laws of that state.
- 11.10 *Independent Contractors.* Covered Entity and Business Associate shall be independent contractors and nothing in this Agreement is intended nor shall be construed to create an agency, partnership, employer-employee, or joint venture relationship between them.