

**HEARING AID PROVIDER
PLATFORM SUBSCRIPTION AGREEMENT**

This Hearing Aid Provider Platform Subscription Agreement (“Agreement”) is entered into on _____, 2021 (“Effective Date”) between Medical Hearing Consultants, LLC, a Michigan limited liability company (“MHC”) and _____ (“Hearing Aid Provider”) at _____ (“Hearing Aid Center”). MHC and Hearing Aid Provider shall be referred to herein, each as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, MHC is organized for the principal purpose of providing a web-based platform to connect hearing aid professionals and their patients with health care providers to evaluate whether a patient is a suitable candidate for hearing aids or whether the individual requires further in-person evaluation.

WHEREAS, Hearing Aid Provider desires to subscribe to the Platform so that their patients seeking hearing aids have the option to have further medical evaluations by health care providers for the purpose of optimal healthcare and patient convenience.

WHEREAS, Hearing Aid Provider is subscribing to the Platform with the knowledge and consent of Hearing Aid Center.

WHEREAS, MHC desires to be so engaged by Hearing Aid Provider pursuant to the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration for the foregoing and the terms and conditions contained here, the Parties, intending to be legally bound, agree as follows.

1. **Services.** MHC provides a web-based platform, as well as other types of administrative services and information, to connect hearing aid professionals and individuals with participating physicians and other licensed health care practitioners (the “Telehealth Providers”) through real-time audio visual communication (“Platform”). The Platform is used by Telehealth Providers to evaluate whether hearing aids are medically necessary for the patient and/or determine whether the individual requires further in-person evaluation. Providers may also, when appropriate, educate the patient about hearing loss, treatment options, and hearing loss prevention (together, the “Telemedicine Services”). **THE PLATFORM DOES NOT INCLUDE THE PROVISION OF MEDICAL CARE BY MHC, AND MHC DOES NOT AND WILL NOT EMPLOY HEALTH CARE PROVIDERS TO PROVIDE MEDICAL CARE. RATHER, THE PLATFORM ENABLES HEALTH CARE PROVIDERS WHO HAVE INDEPENDENTLY SUBSCRIBED TO THE PLATFORM TO PROVIDE PATIENT CARE TO INDIVIDUALS UTILIZING MHC’S PLATFORM. MHC PROVIDES ACCESS TO THE PLATFORM; IT DOES NOT PROVIDE MEDICAL CARE OR RETAIN MEDICAL RECORDS.**
2. **Access.** Subject to the terms and conditions of this Agreement, MHC grants to Hearing Aid Provider a non-transferable, non-assignable, and non-exclusive license to access and use the Platform for Hearing Aid Provider’s internal business only in accordance with the terms

of this Agreement. All rights not specifically granted to Hearing Aid Provider by this Agreement shall remain with MHC. Hearing Aid Provider's right to use the Platform is personal, and Hearing Aid Provider may not make the Platform or its credentials available to any third party, including employees or agents of Hearing Aid Center.

3. **Forms.** The Platform includes certain forms that patients must sign to use the Platform, provide informed consent, and/or receive or provide certain information required by law ("MHC's Forms"). MHC's Forms govern the relationship between the patient and MHC or the Telehealth Provider. Hearing Aid Provider is solely responsible for obtaining any acknowledgements and agreements that are necessary for the services it provides to its patients, and Hearing Aid Provider acknowledges that MHC's Forms may not be applicable to its services. Hearing Aid Provider may not use, modify, copy, or otherwise tamper with MHC's Forms or rely on MHC's Forms for legal advice. Hearing Aid Provider should seek its own legal counsel regarding any legal or compliance issues. MHC's Forms are confidential information for purposes of this Agreement.
4. **Hearing Aid Provider's Responsibilities.** Hearing Aid Provider is, and will remain, solely responsible for: (a) ensuring the Platform is used in accordance with applicable instructions, training materials and other online material that may be made available by MHC from time to time; (b) complying with applicable laws, rules, regulations and standards imposed by government health care programs and other payors, licensing agencies and applicable accreditation bodies; (c) obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Platform, including, without limitation, hardware, internet, and the like (collectively, "Equipment"); (d) maintaining the security of the Equipment, Hearing Aid Provider's account, passwords and files, and for all uses of Hearing Aid Provider account or the Equipment with or without Hearing Aid Provider's knowledge or consent. Hearing Aid Provider shall be solely and fully responsible for any damage to its computer system. Hearing Aid Provider agrees that it is fully responsible for all activities occurring under its user ID. Hearing Aid Provider will not use the Platform in any way that violates applicable law or regulation.
5. **Restrictions on Use.** Hearing Aid Provider must use the Platform solely for its intended purposes in accordance with the Agreement. Hearing Aid Provider may not rent, lease, lend, sell, redistribute, reproduce or sublicense the Platform or make it available to any third party. Hearing Aid Provider must not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Platform, or any part thereof.
6. **No Guarantee of Availability.** MHC shall use reasonable efforts to have a sufficient number of Telehealth Providers available to meet call demand; however, the time a patient waits for the next available Telehealth Provider will vary depending on call volume. If a Telehealth Provider is unable to respond to a patient call within seven (7) minutes, the patient will be given the option to schedule an evening or weekend appointment with a Telehealth Provider. Under no circumstances shall MHC or a Telehealth Provider be liable to Hearing Aid Provider or anyone else for its failure to answer calls or its delay in answering calls. If Hearing Aid Provider is not satisfied with Telehealth Providers' availability, Hearing Aid Provider's only remedy is to terminate this Agreement.

7. **Compensation.** Hearing Aid Provider shall compensate MHC in accordance with Exhibit A (“Fees”). MHC may increase or decrease its Fees without written notice to Hearing Aid Provider. MHC requires Hearing Aid Provider to enroll in autopayment. Each month, Hearing Aid Provider authorizes MHC to automatically charge the credit card, debit card or bank account on file, as applicable, for the amount due for the upcoming month. In the event Hearing Aid Provider does not pay amounts when due or MHC is unable to collect the automatic payment, MHC shall have the right to suspend or cease the provision of any Telehealth Services under this Agreement and/or access to the Platform, until such payment has been made. At the election of MHC, exercisable by written notice to Hearing Aid Provider, any past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. All payments under this Agreement are exclusive of all applicable taxes, all of which shall be paid by Hearing Aid Provider (other than taxes on MHC’s income).
8. **Changes to Platform.** MHC may, in its sole discretion, make any changes to the Platform that it deems necessary or useful to (a) maintain or enhance (i) the quality or delivery of MHC’s products or services to its customers, (ii) the competitive strength of, or market for, MHC’s products or services, (iii) the Platform’s cost efficiency or performance; or (b) to comply with applicable law. Any change to the products or services offered by MHC’s third party providers may materially and adversely effect, or entirely disable, Hearing Aid Provider’s use of or access to the Platform.
9. **Proprietary Rights.** As between MHC and Hearing Aid Provider, MHC is the sole and exclusive owner of the Platform, including any and all copyright, patent, trademark, trade secret and other ownership and intellectual property rights, in and to the Platform and any related materials and documentation made available to Hearing Aid Provider. No title or ownership of the Platform or any portion thereof is transferred to Hearing Aid Provider hereunder. MHC reserves all rights not expressly granted hereunder. Hearing Aid Provider agrees not to change or delete any copyright or proprietary notice related to materials related to the Platform. If Hearing Aid Provider submits comments, suggestions, or other feedback regarding the Platform (“Feedback”), Hearing Aid Provider hereby grants MHC a perpetual license to use and otherwise exploit such Feedback for any lawful purpose. Additionally, MHC may identify Hearing Aid Provider and Hearing Aid Center as a customer, and use Hearing Aid Provider’s and Hearing Aid Center’s logo and trademark, in MHC’s promotional materials.
10. **Hearing Aid Provider and Patient Data.** MHC acknowledges and agrees that it is a “Business Associate” as such term is defined under the Health Insurance Portability and Accountability Act of 1996, and associated regulations as amended from time to time (“HIPAA”). Furthermore, each Party acknowledges and understands that the Platform requires the use and disclosure of protected health information (“PHI”) as defined under HIPAA. If Hearing Aid Provider is a “covered entity” or “business associate” as those terms are defined by HIPAA, then the Parties agree to the Business Associate Agreement (“BAA”) attached as Exhibit B. If a conflict exists between the terms and conditions of the Agreement and those of the BAA, the terms and conditions of the BAA will control with respect to the treatment of PHI.

11. **Term.**
- a. **Term.** This Agreement shall commence on the Effective Date as set forth above and shall continue in effect for a period of one year (“Initial Term”). This Agreement shall automatically renew for successive renewal terms of one (1) year each.
 - b. **Termination Without Cause.** Hearing Aid Provider may terminate this Agreement without cause after the Initial Term by serving written notice of its intention to terminate at least ninety (90) days prior to the date of the next such renewal period.
 - c. **Termination With Cause.** Hearing Aid Provider shall have the right to terminate this Agreement with cause upon thirty (30) days prior written notice to MHC, which shall contain reasonably sufficient detail regarding the alleged breach, upon any breach hereof by MHC, provided MHC shall not have cured such breach within thirty (30) days of receipt of notice.
 - d. **MHC Termination With or Without Cause.** MHC may terminate or suspend this Agreement immediately upon written notice to Hearing Aid Provider with or without cause. Upon termination of this Agreement, all rights granted to Hearing Aid Provider will terminate and revert to MHC.
12. **Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses under this Agreement; (c) the execution of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms. Without limiting the foregoing, Hearing Aid Provider represents and warrants to MHC that it has express permission and authority from Hearing Aid Center to use the Platform.
13. **Third Party Materials.** Provision of the Platform may involve the use of materials and information, including software, documents, data, content, specifications, products, equipment, or components that are not proprietary to MHC (collectively, “Third Party Materials”). MHC makes no representations or warranties concerning the operation or functionality of any such Third Party Materials. MHC shall not be liable for any claims or losses arising out of or related to Hearing Aid Provider’s use of Third Party Materials, and nothing in this Agreement grants any right, title, or interest in or to any intellectual property rights in or relating to any Third Party Materials.
14. **Disclaimer.** THE PLATFORM IS PROVIDED “AS IS.” MHC, ITS SUPPLIERS AND VENDORS, AND ITS OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AFFILIATES, SUPPLIERS, VENDORS, LICENSORS OR PARTNERS (COLLECTIVELY, “MHC PARTIES”), TO THE MAXIMUM EXTENT

PERMITTED BY LAW, DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO MHC PARTY WARRANTS THAT ACCESS TO THE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, TIMELY, 100% SECURE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED. HEARING AID PROVIDER ACKNOWLEDGES AND AGREES THAT TEMPORARY INTERRUPTIONS IN SERVICES MAY OCCUR, AND MHC PARTIES SHALL NOT HAVE LIABILITY FOR ANY CLAIM, COST, CHARGE, LOSS OR EXPENSE ARISING FROM OR RELATING TO SUCH TEMPORARY INTERRUPTION. HEARING AID PROVIDER ACKNOWLEDGES AND AGREES THAT DATA MAY BE LOST OR CORRUPTED IN CONNECTION WITH USE OF THE PLATFORM. FURTHER, NO MHC PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SERVICES PROVIDED BY THIRD PARTY PROVIDERS RELATING TO THE PLATFORM, INCLUDING THIRD PARTY TECHNOLOGY PROVIDERS OR TELEMEDICINE PROVIDERS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEARING AID PROVIDER HEREBY WAIVES ANY CLAIM AGAINST EACH MHC PARTY RELATING TO SUCH THIRD PARTY SERVICES AND AGREES ANY SUCH CLAIM WILL, AS BETWEEN THE APPLICABLE MHC PARTY AND SUCH THIRD PARTY SERVICE PROVIDER, BE SOLELY AGAINST SUCH THIRD PARTY SERVICE PROVIDER. ADDITIONALLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, HEARING AID PROVIDER ACKNOWLEDGES AND AGREES (A) NO PART OF THE PLATFORM CONSTITUTES THE PROVISION OF MEDICAL ADVICE OR SERVICES IN ANY MANNER, AND (B) THE PLATFORM DOES NOT ENSURE HEARING AID PROVIDER'S COMPLIANCE WITH APPLICABLE LAWS OR REGULATIONS. MHC DOES NOT ENDORSE THE TELEHEALTH PROVIDERS THAT SUBSCRIBE TO AND USE THE PLATFORM, CANNOT GUARANTEE THEIR CREDENTIALS, AND CANNOT GUARANTEE THE QUALITY OF THE TELEMEDICINE SERVICES THEY PROVIDE.

15. **Limitation of Liability.** IN NO EVENT WILL (A) A MHC PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL FEES PAID OR OWED BY HEARING AID PROVIDER UNDER THE AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM (SUCH AMOUNT BEING INTENDED AS A CUMULATIVE CAP AND NOT PER INCIDENT), OR (B) MHC PARTY HAVE ANY LIABILITY TO HEARING AID PROVIDER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH MHC PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16. **Confidentiality.** Hearing Aid Provider (“Receiving Party”) acknowledges that it may receive information regarding the business, technology and finances of MHC (“Disclosing Party”), all of which information, when disclosed in circumstances of confidence that the Receiving Party should reasonably understand is confidential, is deemed to be “confidential information” for purposes of the Agreement. Receiving Party acknowledges and agrees that Disclosing Party’s confidential information is proprietary and integral to Disclosing Party’s business and agrees to keep such confidential information confidential and not use or disclose such confidential information to any third person except as contemplated herein or as otherwise necessary to perform its duties hereunder. Notwithstanding the foregoing, confidential information does not include information that (a) is or became generally available to the public, (b) was in its possession or known by the Receiving Party prior to receipt from the Disclosing Party, (c) was rightfully disclosed to the Receiving Party without restriction by a third party, (d) was independently developed by the Receiving Party without use of any confidential information of the Disclosing Party, or (e) is required to be disclosed by law.
17. **Miscellaneous.**
- a. **Assignment.** MHC may assign or transfer this Agreement (or its rights and/or obligations thereunder) to any third party without consent. Hearing Aid Provider may not assign or transfer this Agreement to a third party without the prior written consent of MHC. This Agreement will bind and inure to the benefit of the Parties hereto and their permitted successors and assignees.
- b. **Third Party Beneficiaries.** Hearing Aid Provider expressly acknowledges and agrees that the MHC Parties are direct and intended third party beneficiaries hereunder, and that any such MHC Party may enforce any part of the Agreement that is applicable to it against Hearing Aid Provider to the extent that such MHC Party’s interests may be affected.
- c. **Entire Agreement.** This Agreement constitutes the full and complete agreement and understanding between the Parties with respect to the Platform and may only be modified upon the mutual written consent of the Parties. Notwithstanding the foregoing, MHC may modify this Agreement by sending written notice to Hearing Aid Provider and Hearing Aid Provider agrees that by continuing to use the Platform after receiving notice of the modified Agreement, Hearing Aid Provider agrees to be bound by the changes.
- d. **Severability.** Nothing in the Agreement is intended to conflict with current law or regulation. If a term of the Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of the Agreement shall remain in full force and effect.
- e. **Force Majeure.** MHC is not responsible nor liable for any delays or failures in performance relating to any cause beyond its control, including, but not limited to acts of God; changes to law or regulations; war; acts or omissions of third party technology providers; riots; fires; natural disasters; acts of hackers, internet service

providers or any other third party; or acts or omissions of Hearing Aid Provider. Without limiting the generality of the foregoing, MHC and the Platform rely on third party technology and services.

- f. **Relationship of the Parties.** The status of a Party under this Agreement shall be that of an independent contractor. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties or, except as otherwise expressly provided in this Agreement, as granting either Party the authority to bind or contract any obligation in the name of or on the account of the other Party or to make any statements, representations, warranties or commitments on behalf of the other Party. All persons employed by a Party shall be employees of such Party and not of the other Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.
- g. **Waiver.** No delay or failure by either Party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.
- h. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- i. **Notice.** Except as otherwise specified herein, all notices under this Agreement shall be in writing and shall be mailed by first-class, registered, certified mail or overnight mail, return receipt requested, or via email. If notice is sent to Hearing Aid Provider, notice shall be sent to the addresses set forth on the signature page. If notice is sent to MHC, notice shall be sent to 21482 Wedgewood Drive, Grosse Pointe Woods, MI 48236, [insert email].

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent via email, unless the sender receives an automated message that the email has not been delivered. A Party may, for purposes of this Agreement, change its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other Party pursuant to this Section 17(i).

- j. **Governing Law.** The Agreement, and all disputes and actions arising under or related to the Agreement, shall (i) be governed by and construed in accordance with the internal laws (and not the law of conflicts) of Michigan and (ii) any civil action or legal action arising out of or relating to this Agreement shall be brought in the applicable Federal or State court located in Wayne County, Michigan, except

that, MHC may seek injunctive relief in any state or federal court of competent jurisdiction. Upon written notice to Hearing Aid Provider, MHC may change the governing law and venue set forth in this Section 17(j). Any cause of action or claim Hearing Aid Provider may have with respect to MHC must be commenced within one (1) year after Hearing Aid Provider is aware of the basis of such cause or claim, except to the extent such limitation is not enforceable.

- k. **Survival.** Notwithstanding anything in this Agreement to the contrary, the following provisions of this Agreement shall survive the termination of this Agreement: Sections 6 (“Compensation”), Section 9 (“Proprietary Rights”), Section 13 (“Third Party Materials”), Section 14 (“Disclaimers”), Section 15 (“Limitation of Liability”), Section 16 (“Confidentiality”), Section 17(i) (“Notice”), Section 17(j) (“Governing Law”), Section 17(k) (“Survival”), and all other terms and provisions of this Agreement that by their nature extend beyond the termination of this Agreement.
- l. **Compliance with Laws.** Hearing Aid Provider shall comply with all applicable laws in relation to its performance under this Agreement.
- m. **Corporate Practice of Medicine.** MHC IS THE PROVIDER OF THE PLATFORM ONLY. MHC DOES NOT AND WILL NOT EMPLOY OR CONTRACT WITH HEALTH CARE PROVIDERS TO PROVIDE MEDICAL CARE ON ITS BEHALF. RATHER, THE PLATFORM ENABLES HEALTH CARE PROVIDERS WHO HAVE INDEPENDENTLY SUBSCRIBED TO THE PLATFORM TO ACCESS PATIENTS DESIRING PATIENT CARE UTILIZING MHC’S PLATFORM. MHC PROVIDES PROVIDERS AND PATIENTS ACCESS TO THE SAME PLATFORM; IT DOES NOT PROVIDE MEDICAL CARE, MAINTAIN MEDICAL RECORDS, CREDENTIAL PROVIDERS, BILL PATIENTS OR THIRD PARTY PAYERS, OR GUARANTEE THE QUALITY OR AVAILABILITY OF SERVICES PROVIDED.
- n. **Patient Referrals.** The Parties agree that no part of this Agreement shall be construed to induce or encourage, directly or indirectly, the referral of patients or the purchase of health care services or supplies. The Parties acknowledge that there is no requirement under this Agreement or any other agreement between the Parties that either Party refer any patients to any health care provider or purchase any health care goods or services from any source. No payment made under this Agreement shall be in return for such referral or purchase. MHC does not guarantee any referrals of patients and makes no representations regarding the volume or number of interactions Hearing Aid Provider will have with patients.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**MEDICAL HEARING CONSULTANTS,
LLC**

By: _____

Print Name: _____

Title: _____

Date: _____

HEARING AID PROVIDER

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

HEARING AID CENTER

Address: _____

Phone: _____

Fax: _____

Email: _____

Website: _____

EXHIBIT A

Fee Schedule

Hearing Aid Provider shall pay MHC a fee of \$75.00 a month, and a one-time \$150.00 initiation fee.

EXHIBIT B

Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into on the Effective Date, by and between Medical Hearing Consultants, LLC (“Business Associate”), and Hearing Aid Provider (“Covered Entity”).

WHEREAS, Covered Entity is required to comply with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (the “Act”) and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) and the Security Standards for the Protection of Electronic PHI (the “Security Rule”), amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and its implementing regulations, and as they may be further amended from time to time (collectively, “HIPAA”);

WHEREAS, Business Associate, in the course of providing the Platform to Covered Entity, may receive or have access to certain Protected Health Information (“PHI”) and may be deemed a business associate for certain purposes under HIPAA;

WHEREAS, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity’s knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

WHEREAS, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate’s obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

NOW, THEREFORE, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

1. Definitions. Unless otherwise defined herein, terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Agreement as applicable; provided, however, that the terms Protected Health Information or PHI shall refer to only the PHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

2. Obligations and Activities of Business Associate. To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:

(a) Use or Disclosure. Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Agreement, or as required by law.

(b) Specific Use or Disclosure. Except as otherwise limited by this BAA, Business Associate may use or disclose PHI:

(i) to perform data aggregation and other services required under the Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate; and

(ii) for the proper management and administration of Business Associate or to carry out Business Associate's responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.

(d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA. To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.

(e) **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate.

(f) **Reporting.** Within seven (7) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Agreement, of which Business Associate may become aware. Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

(g) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or

disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Agreement.

(h) **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

(i) **Accounting.** Business Associate agrees to document and report to Covered Entity, within seven (7) business days of a request by Covered Entity, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. § 164.528.

(j) **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to promptly make PHI available to Covered Entity upon Covered Entity's request for:

(i) Covered Entity to comply with its access obligations in accordance with 45 C.F.R. § 164.524; and

(ii) amendment as may be required for Covered Entity to comply with its amendment obligations in accordance with 45 C.F.R. § 164.526.

(k) **Subcontractor As Agent.** To the extent that Business Associate carries out one or more obligations of Covered Entity under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in performing such obligations.

3. Obligations of Covered Entity.

(a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity agrees to 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. **Term and Termination.**

(a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall remain in effect until the expiration or earlier termination of the Agreement.

(b) **Termination Upon Breach.** Without limiting the termination rights of the Parties pursuant to the Agreement, upon either Party's knowledge of a material breach of this BAA by the other Party, the non-breaching Party shall notify the breaching Party of such breach and the breaching Party shall have thirty (30) days from the date of notification by the non-breaching Party to cure such breach. In the event that such breach is not cured within such thirty (30) day period, or cure is infeasible, the non-breaching Party shall have the right to immediately terminate this BAA and those portions of the Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Agreement.

(c) **Effect of Termination.**

(i) To the extent feasible, upon termination of this BAA or the Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and, upon request of Covered Entity, verify to Covered Entity in writing that such return or destruction has been completed.

(ii) If Business Associate determines that it is not feasible to return or destroy PHI, Business Associate agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

5. **Miscellaneous.**

(a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for the Parties to comply with the requirements of HIPAA.

(c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

(d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Neither Party may assign or subcontract the rights or obligations under this BAA without the express written consent of the other Party, provided that Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

(e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

(f) **Effect on Agreement.** This BAA, together with the Agreement, constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall control unless the terms of such Agreement are stricter, as determined by Covered Entity, with respect to PHI and compliance with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either Party. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this BAA.

(g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Parties to comply with HIPAA and any subsequent guidance.

(h) **No Third Party Rights.** The terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.

(i) **Applicable Law.** This BAA shall be governed under the laws of Michigan.