

## HIPAA BUSINESS ASSOCIATE AGREEMENT

\_\_\_\_\_ (“CE”) and MDprospects & Patient Spectrum (“Business Associate”) desire to achieve compliance with the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health (“HITECH”) Act and their implementing regulations in connection with goods or services that are being provided by Business Associate to Practice and Business Associate may hereafter be referred to individually as a “Party” and collectively as the “Parties.” To the extent that Practice discloses Protected Health Information to Business Associate in connection with such goods or services, the following provisions shall apply:

### RECITALS

- A. CE is a “covered entity” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and 45 CFR Part 160.103 and, as such, must enter into so-called “business associate” contracts with certain contractors that may have access to certain health-related personal information regulated by HIPAA.
- B. Pursuant to the Terms of Use (defined below), MDprospects & Patient Spectrum provides certain services to CE, including the provision of the Account and the services accessible with that Account. To facilitate MDprospects & Patient Spectrum’s provision of such services, CE wishes to disclose certain information to MDprospects & Patient Spectrum, some of which may constitute Protected Health Information (defined below).
- C. The Terms of Use prohibit CE from collecting PHI (defined below) through the Account without the prior written consent of MDprospects & Patient Spectrum.
- D. CE and MDprospects & Patient Spectrum desire to protect the privacy, and provide for the security, of Protected Health Information provided to MDprospects & Patient Spectrum through the Account in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-005 (“**HITECH Act**”), and HIPAA Regulations (defined below) promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws, including without limitation state patient privacy laws, as such laws may be amended from time to time.
- E. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (each defined below) require CE to enter into a contract with MDprospects & Patient Spectrum containing specific requirements prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, s 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“**C.F.R.**”) and contained in this BAA.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, CE and MDprospects & Patient Spectrum agree as follows:

### 1. DEFINITIONS:

- a. **Administrative Safeguards:** “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the entity’s workforce in relation to the protection of that information.
- b. **Breach:** “Breach” shall have the same meaning as the term “breach” in the HITECH Act, Section 13400(1) and 45 CFR §164.402(2).
- c. **Business Associate:** has the meaning given to such term under 42 U.S.C. § 17938 and 45 C.F.R. § 160.103.
- d. **Covered Entity:** has the meaning given to such term under 45 C.F.R. § 160.103.
- e. **Designated Record Set:** has the meaning given to such term 45 C.F.R. § 164.501.
- f. **Data Aggregation:** has the meaning given to such term under 45 C.F.R. § 164.501
- g. **HIPAA Regulations:** means, collectively, the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 and 164.
- h. **Privacy Rule:** means the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- i. **Electronic Health Record:** “Electronic Health Record” shall have the same meaning as the term “electronic health record” in the HITECH Act, Section 13400(5).
- j. **Electronic Protected Health Information:** “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits from or on behalf of Practice.
- k. **Individual:** “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- l. **Integrity:** “Integrity” means the property that data or information have not been altered or destroyed in an unauthorized manner.
- m. **Physical Safeguards:** “Physical Safeguards” are physical measures, policies, and procedures to protect an entity’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- n. **Protected Health Information:** “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Practice.

- o. **Protected Information**: means PHI provided by CE to MDprospects & Patient Spectrum or created or received by MDprospects & Patient Spectrum on CE's behalf in connection with the Account provided by MDprospects & Patient Spectrum pursuant to the Terms of Use.
- p. **Required By Law**: "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- q. **Secretary**: "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- r. **Security Incident**: "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- s. **Technical Safeguards**: "Technical Safeguards" means the technology and the policy and procedures for its use that protect electronic health information and control access to it.
- t. **Terms of Use**: means the Terms of Service located on MDprospects & Patient Spectrum's website at <http://www.glacial.com/termservice.html>
- u. **Unsecured Protected Health Information**: "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in the HITECH Act, Section 13402(h)(1) and (2).

## 2. GENERAL LIMIT ON USE AND DISCLOSURE ESTABLISHED BY TERMS OF THIS AGREEMENT:

Business Associate will not use or disclose the Protected Health Information provided or made available by Practice for any purpose other than as expressly permitted or required by this Agreement or as Required By law. Business associate use and disclosure of protected health information must be consistent with the minimum necessary policies and procedures of Practice (§ 164.502(b)).

## 3. GENERAL USE AND DISCLOSURE:

- a. Except as otherwise limited in this Agreement, Business Associate may use and/or disclose Protected Health Information on behalf of Practice for the purposes of providing goods or services to Practice ("Services"), if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Practice.
- b. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate's operations or to carry out its responsibilities to Practice.

- c. Except as otherwise limited in this Agreement, Business Associate may use and disclose Protected Health Information that it receives by or on behalf of Practice if necessary, to provide data aggregation services relating to the health care operations of Practice.

#### 4. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:

- a. **No Further Use or Disclosure:** Business Associate will not use or further disclose Protected Health Information provided or made available by Practice other than as permitted or required by this Agreement or as Required by Law.
- b. **Appropriate Safeguards:** Business Associate will use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. **Permitted Access, Use or Disclosure.** MDprospects & Patient Spectrum shall:
  - 1) use best efforts to not permit the unauthorized or unlawful access of Protected Information;
  - 2) not use or disclose, Protected Information other than as permitted or required by the Terms of Use, this BAA, or as permitted or required by applicable law; and
  - 3) be permitted to use Protected Information to de-identify such information in accordance with 45 CFR 164.514(a)-(c), and shall be permitted to use such de-identified information as permitted by applicable law.

***Except as otherwise limited in the Terms of Use or this BAA, MDprospects & Patient Spectrum may access, use, or disclose Protected Information:***

- 4) to perform its services as specified in the Terms of Use; and
- 5) for the proper administration of MDprospects & Patient Spectrum , provided that such access, use, or disclosure would not violate HIPAA, the HITECH Act, the HIPAA Regulations, or applicable state law if done or maintained by CE.

***If MDprospects & Patient Spectrum discloses Protected Information to a third party, other than at the instruction or direction of the Covered Entity, MDprospects & Patient Spectrum must obtain, prior to making any such disclosure:***

- 6) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by applicable law or for the purposes for which it was disclosed to such third party, and
- 7) agreement from such third party to promptly notify MDprospects & Patient Spectrum of any Breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such Breach.

- d. **Prohibited Uses and Disclosures under HITEC.:** Notwithstanding any other provision in this BAA, MDprospects & Patient Spectrum shall comply with the following requirements:

- 1) MDprospects & Patient Spectrum shall not use or disclose Protected Information for fundraising or marketing purposes, except as provided under the Terms of Use and consistent with the requirements of 42 U.S.C. § 17936;
- 2) MDprospects & Patient Spectrum shall not disclose Protected Information 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 Protected Information solely relates, 42 U.S.C. § 17935(a). CE expressly agrees that if a patient has requested the above special restriction, CE will not provide such patient's Protected Information to MDprospects & Patient Spectrum . If the patient has requested the special restriction after CE has disclosed to MDprospects & Patient Spectrum such patient's Protected Information, CE shall promptly notify MDprospects & Patient Spectrum in writing of such request and MDprospects & Patient Spectrum shall not be liable for any disclosure to a health plan made before receipt of CE's written notification; and
- 3) MDprospects & Patient Spectrum shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2); however, this prohibition shall not affect payment by CE to MDprospects & Patient Spectrum for services provided pursuant to the Terms of Use.

e. **Breach:** Business Associate will promptly notify Practice following the discovery of a Breach of Unsecured Protected Health Information. A Breach is considered "discovered" as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach. Any notice of a security incident or Breach of Unsecured Protected Health Information shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such security incident or Breach as well as a description of what happened, the type of Unsecured Protected Health Information that were involved, what Business Associate is doing to investigate the Breach.

f. **Mitigation Procedures:** Business Associate will mitigate, to the maximum extent practicable, any harmful effect that is known to Business Associate from the use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

g. **Reporting of Improper Access, Use or Disclosure:** Business Associate will promptly report to Practice any use or disclosure of Protected Health Information not provided for or allowed by this Agreement of which it becomes aware.

- 1) **Generally.** MDprospects & Patient Spectrum shall promptly notify CE of any Breach of security, intrusion or unauthorized access, use, or disclosure of Protected Information of which MDprospects & Patient Spectrum becomes aware and/or any access, use, or disclosure of Protected Information in violation of the Terms of Use, this BAA, or any applicable law of which it becomes aware. MDprospects & Patient Spectrum shall take to the extent technically and physically possible: (i) prompt corrective action to cure any

deficiencies in its policies and procedures that may have led to the incident; and (ii) any action pertaining to such unauthorized access, use, or disclosure required of MDprospects & Patient Spectrum by applicable law.

2) Breaches of Unsecured PHI. Without limiting the generality of the reporting requirements set forth in Section 2.4(a), MDprospects & Patient Spectrum also shall, to the extent permitted by the law applicable to MDprospects & Patient Spectrum, following the discovery of any Breach of Unsecured PHI that is Protected Information, notify CE in writing of such Breach without unreasonable delay and in no case later than 60 days after discovery. The notice shall include the following information if known (or can be reasonably obtained) by MDprospects & Patient Spectrum: (i) contact information for the individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, email address); (ii) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery (as defined in 42 U.S.C. § 17932(c)); (iii) a description of the types of Unsecured PHI involved in the Breach (e.g., names, social security numbers, date of birth, addresses, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); and (iv) a brief description of what the MDprospects & Patient Spectrum has done or is doing to investigate the Breach and to mitigate harm to the individuals impacted by the Breach.

3) Mitigation. MDprospects & Patient Spectrum shall establish and maintain safeguards to mitigate, to the extent practicable, any deleterious effects known to MDprospects & Patient Spectrum of any unauthorized or unlawful access or use or disclosure of Protected Information not authorized by the Terms of Use, this BAA, or applicable laws or regulations; provided, however, that unless otherwise agreed in writing by the parties or required by applicable federal or state laws or regulations, such mitigation efforts by MDprospects & Patient Spectrum shall not require MDprospects & Patient Spectrum to bear the costs of notifying individuals impacted by such unauthorized or unlawful access, use, or disclosure of Protected Information; provided, further, however, that MDprospects & Patient Spectrum shall remain fully responsible for all aspects of its reporting duties to CE under Section 2.4(a) and Section 2.4(b).

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**h. Business Associate's Subcontractors and Agents.** MDprospects & Patient Spectrum shall ensure that any agents or subcontractors to whom it provides Protected Information agree to restrictions and conditions comparable to those that apply to MDprospects & Patient Spectrum with respect to such Protected Information. To the extent that MDprospects & Patient Spectrum creates, maintains, receives or transmits EPHI on behalf of the CE, MDprospects & Patient Spectrum shall ensure that any of MDprospects & Patient Spectrum's agents or subcontractors to whom it provides Protected Information agree to implement the safeguards required by Section 2.3 (Appropriate Safeguards) with respect to such EPHI.

**i. Right of Access to Information:** Business Associate will provide access, at the request of Practice, to Protected Health Information in a Designated Record Set (as that term is defined

in 45 CFR 164.501 of the Privacy Rule), to Practice or, as directed by Practice, to an individual, in order to meet the requirements under the Privacy Rule.

- j. **Amendment and Incorporation of Amendment:** Business Associate will make any amendment(s) to Protected Health Information in a Designated Record Set that Practice directs or agrees to pursuant to the Privacy Rule at the request of Practice or an Individual, and in the time or manner designated by Practice.
- k. **Access to Books and Records:** Business Associate will make its internal practices, books and records relating to the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Practice, available to Practice, or at the request of Practice to the Secretary, in a time and manner designated by Practice, or the Secretary, for purposes of the Secretary determining Practice's compliance with the Privacy Rule.
- l. **Provide Accounting:** Business Associate will document such disclosures of Protected Health Information and information related to such disclosures as would be required for Practice to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with the Privacy Rule. Business Associate agrees to provide to Practice or an Individual, in a reasonable time frame, information collected in accordance with this section of this Agreement, to permit Practice to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with the Privacy Rule.
- m. **Electronic Transmission of Protected Health Information:** Business Associate agrees to implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information ("ePHI") which Business Associate creates, receives, maintains or transmits on behalf of Practice and to implement reasonable and appropriate policies and procedures to comply with the applicable requirements of 45 CFR Part 164, Subpart C. Business Associate agrees to ensure that any agents and subcontractors to whom Business Associate provides ePHI agree to implement reasonable and appropriate safeguards to protect it. Business Associate agrees to have a system in place to report to Practice any Security Incident of which it becomes aware.
- n. **Governmental Access to Records:** MDprospects & Patient Spectrum shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary for purposes of determining CE's compliance with the Privacy Rule.
- o. **Minimum Necessary:** To the extent feasible in the performance of services under the Terms of Use, MDprospects & Patient Spectrum (and its agents or subcontractors) shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Because the definition of "minimum necessary" is in flux, CE shall keep MDprospects & Patient Spectrum informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary." Notwithstanding the foregoing, the parties agree that based on the nature of the services provided to CE by

MDprospects & Patient Spectrum under the Terms of Use, MDprospects & Patient Spectrum may be unable to determine what constitutes “minimum necessary” under HIPAA, and thus MDprospects & Patient Spectrum shall be entitled to rely on CE’s direction as to what constitutes “minimum necessary” with respect to the access, use, or disclosure of CE’s Protected Information in the possession or under the control of MDprospects & Patient Spectrum .

- p. **Survival:** The provisions of this Section 4 shall survive termination of any relationship between Business Associate and Practice.
- q. **Indemnification:** Business Associate agrees to indemnify the Practice for any costs associated with and resulting from the Business Associate’s breach of the provisions of this agreement or any other breach in connection with goods or services that are being provided by Business Associate to Practice, including free credit monitoring services to effected individuals.

## 5. OBLIGATIONS OF PRACTICE:

- a. **Notice of Privacy Practices:** Practice will provide Business Associate with its Notice of Privacy practices. Practice will provide Business Associate with any changes to that Notice.
- b. **Revocation of Authorization to Use/Disclose PHI:** Practice will provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate’s permitted uses and disclosures.
- c. **Permissible Requests:** Practice will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule.
- d. **Restrictions to Use/Disclose PHI:** Practice will notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Practice has agreed to in accordance with the Privacy Rule to the extent that such restrictions may affect Business Associate’s use or disclosure of Protected Health Information.

## 6. INDEMNIFICATION

Each party (an “**Indemnifier**”) shall indemnify and hold harmless the other party (the “**Indemnified**”) from and against any and all fines, losses, liabilities, expenses, damages or injuries that the Indemnified sustains as a result of, or arises out of, a third party claim that: (a) the Indemnifier has violated an applicable law or regulation (including the HIPAA Regulations) in connection with this BAA, or (b) arises out of a breach of this BAA by the Indemnifier or its agents or subcontractors (including the unauthorized use or disclosure of any Protected Information).



Business Associate shall indemnify the Covered Entity for costs related to notification and mitigation of losses which can be proved of individuals or next of kin (if the individual is deceased) of any security or privacy breach reported by Business Associate (caused by its gross negligence or willful misconduct) to the Covered Entity and Business Associate shall indemnify, hold harmless, and, at the Covered Entity's election, defend the Covered Entity with respect to any and all claims, damages, judgments, actions, and causes of action, arising out of any breach of security, intrusion or unauthorized disclosure of PHI by Business Associate's officers, agents, Subcontractors, and employees providing services pursuant to the Agreement, including costs, expenses and attorney's fees incurred in the defense of any and all claims and/or litigation. The obligations set forth herein shall survive termination of this Agreement and shall be limited to 300.000 USD per occurrence and 1 Million USD aggregate per year.

## 7. LIMITATION OF LIABILITY

IN NO CASE SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING TOWARDS INDIVIDUALS OR THEIR NEXT OF KIN (IF THE INDIVIDUAL IS DECEASED), BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR STRICT TORT. SUCH EXCLUDED DAMAGES INCLUDE BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF SAVINGS OR REVENUE, LOSS OF USE OF THE EQUIPMENT, SUBLICENSED SOFTWARE, LICENSED SOFTWARE, OR THE SYSTEM OF WHICH THEY ARE PART, OR ANY ASSOCIATED EQUIPMENT. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, CONSULTANT'S MAXIMUM LIABILITY FOR ANY CLAIM OR SERIES OF RELATED CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THREE (3) TIMES THE TOTAL CONTRACT VALUE

## 8) CONFIDENTIAL INFORMATION

- a. Confidentiality. MDprospects & Patient Spectrum shall use the Protected Information only to exercise its rights and fulfill its obligations under this BAA or the Terms of Use. MDprospects & Patient Spectrum will not disclose the Protected Information, except to its affiliates, officers, employees, directors, agents, contractors, legal counsel, financial advisors, and other similar professionals who need to know it ("Representatives") and who have agreed to treat the Protected Information in accordance with the confidentiality provisions in this BAA. MDprospects & Patient Spectrum will be responsible for any actions of its Representatives in violation of this Section 10.1. MDprospects & Patient Spectrum may disclose the Protected Information when required by law, regulation, legal process, or court order.
- b. Exceptions. For the purposes of Section 10.1 (Confidentiality) only, the confidentiality obligations therein do not cover Protected Information that: (a) MDprospects & Patient Spectrum already lawfully knew at the time of receipt from CE; (b) becomes public through

no fault of MDprospects & Patient Spectrum ; (c) was independently developed by MDprospects & Patient Spectrum without reference to the Protected Information; or (d) was rightfully and lawfully given to MDprospects & Patient Spectrum by a third party who did not acquire that information through a breach of confidence.

## 9) TERM AND TERMINATION:

- a. **Term:** This Agreement is effective as of the commencement of the relationship between Business Associate and Practice and shall terminate with respect to the obligations of Business Associate concerning PHI (i) when all of the Protected Health Information provided by Practice to Business Associate or created or received by Business Associate on behalf of Practice, is destroyed or returned to Practice, or if it is infeasible to return or destroy all Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section, or (ii) when the relationship between Business Associate and Practice has terminated, provided, however, that the obligations of Business Associate shall extend until the Protected Health Information provided by Practice to Business Associate, or created or received by Business Associate on behalf of Practice, is destroyed or returned to Practice, or if it is infeasible to return or destroy all Protected Health Information, protections are extended to such information. Pursuant to 45 CFR § 164.504(e)(1)(ii), if the Practice knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligation under the contract or other arrangement, reasonable steps to cure the breach or end the violation must be taken. If such steps were unsuccessful, Practice must terminate the contract or arrangement, if feasible.
- b. **Effect of Termination:** As provided below, upon termination of the relationship between Business Associate and Practice, for any reason, Business Associate hereby agrees to return or destroy all Protected Health Information received from Practice, or created or received by Business Associate on behalf of Practice. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Where the return or destruction of Protected Health Information is not feasible, Business Associate agrees to extend the protections of this Agreement to such Protected Health Information and limit any further use or disclosure to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains the information.
- c. **Violation of BAA:** Pursuant to §164.504(e)(1)(ii), if Practice knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligation under the contract or other arrangement, reasonable steps to cure the breach or end the violation must be taken. If such steps were unsuccessful, Practice must terminate the contract or arrangement, if feasible. Business Associate must follow same rule in relation to subcontractor(s) pursuant to §164.504(e)(iii).

- d. **Suspension Events:** Lapsed Account The Account is provided to CE by MDprospects & Patient Spectrum on a paid subscription basis, which means that the Account must be periodically renewed in accordance with the Terms of Use if CE wishes to continue receiving services from MDprospects & Patient Spectrum in connection with the Account. If the Account is not renewed, or if CE fails to pay any fees due in relation to the Account (such as renewal fees), MDprospects & Patient Spectrum may suspend the Account for a Suspension Period of 6 months. In such case, CE may reinstate its Account by renewing it, or paying any overdue fees due in relation to it (as the case may be), before the end of the Suspension Period.
- e. **Suspended HIPAA Account:** If MDprospects & Patient Spectrum suspends the Account, MDprospects & Patient Spectrum will preserve all data contained in the Suspended HIPAA Account for the Suspension Period, but functionality for the Account will be disabled (except for certain billing and account administration functions) and the Protected Information will no longer be directly accessible to CE through the Account's online interface. All Protected Information contained in the Suspended HIPAA Account will continue to be subject to this Agreement. MDprospects & Patient Spectrum will close the Suspended HIPAA Account after the end of the Suspension Period unless it is reinstated earlier. During the Suspension Period, CE may:
  - a. access the Suspended HIPAA Account to retrieve billing details and make account payments;
  - b. submit a written request to MDprospects & Patient Spectrum for an export of CE's data contained in the Suspended HIPAA Account. MDprospects & Patient Spectrum will use commercially reasonable efforts to fulfill such request promptly; and
  - c. close its Suspended HIPAA Account by submitting a written notice to MDprospects & Patient Spectrum . MDprospects & Patient Spectrum will fulfill such closure request promptly upon receiving the notice.
- f. **Effect of Account Closure:** This BAA will terminate upon the closure of the Account (including of a Suspended HIPAA Account). If CE requests MDprospects & Patient Spectrum to close the Account, CE is solely responsible for ensuring that such closure will not cause CE or MDprospects & Patient Spectrum to violate any applicable laws.
- g. **Termination:** This BAA may be terminated:
  - a. by CE upon written notice if MDprospects & Patient Spectrum materially breaches this BAA and the breach is not cured by MDprospects & Patient Spectrum within 60 business days of receiving written notice of such breach; or
  - b. by MDprospects & Patient Spectrum for any reason upon 90 days' prior written notice, provided that MDprospects & Patient Spectrum shall provide reasonable assistance to CE to destroy or return any of CE's Protected Information before the effective date of termination. In such case, CE will be entitled to receive a pro rata refund of any fees prepaid by the Customer applicable to the Account for the period following the closure of the Account.

10. MISCELLANEOUS PROVISIONS:

- a. **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 Practice, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- b. **Rights and Property:** All title to the physical medical records, medical charts and other Protected Health Information shall remain the sole property of Practice.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**COVERED ENTITY**  
*(your practice)*

**BUSINESS ASSOCIATE**  
*(MDprospects & Patient Spectrum )*

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

Name: Michelle Pelletier

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

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

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

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

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

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

