

## MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

This Master Services Agreement (“MSA”) governs the use by a Customer of the Services provided by Retriever Medical/Dental Payments, LLC d/b/a **RECTANGLE HEALTH**, with its principal place of business at 115 East Stevens Avenue, Suite 300, Valhalla, NY 10595 USA (“Rectangle Health”). Capitalized terms have the definitions set forth in this MSA. Rectangle Health and Customer may each individually be referred to in this MSA as “Party” or jointly as “Parties.”

WHEREAS Rectangle Health is a provider of practice management, patient payment, hosted software offerings and other services and the Customer wishes to obtain access to the same under the terms of this MSA; and

WHEREAS the Parties desire that this MSA serve as a master agreement and set forth the terms and conditions for the purposes of any attached Order Form (as defined below) and subsequent orders that Customer may place with Rectangle Health or a Partner, from time to time.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises and covenants hereinafter set forth, the Parties agree to the terms hereof and cause this MSA to be effective as of the date on which Rectangle Health starts invoicing Customer, as set forth in Section 4.b.(1) below (the “Effective Date”).

The Customer accepts this MSA by executing an Order Form that references this MSA. If the individual accepting this MSA is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to the terms and conditions of this MSA, in which case the term “Customer” shall refer to such entity and its affiliates. If the individual accepting this MSA does not have such authority or does not agree with the terms and conditions of this MSA, such individual must not accept this MSA and may not use the Services.

### **1. DEFINITIONS.** As used in this MSA:

“Confidential Information” means any information, data, trade secrets, know-how, directly, or indirectly, in writing or orally or by inspection of samples, equipment or facilities, including but not limited to past, present and future research, products, product plans, services, services documentation (in whatever form or media provided) customers, customer lists, user data, revenue, markets, software developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration, marketing, marketing materials, financial or other business information, the financial terms of this MSA, and information protected under various laws and regulations, including patient data (whose treatment should be memorialized in a Business Associate Agreement (“BAA”) executed by the Parties either separately or in the form set forth under Exhibit B).

“Customer Data” means any data of any type that is submitted by or on behalf of Customer to the Services for use on a platform or storage in a data repository in the course of using the Services.

“Customer Personal Data” means all Customer Data relating to an identified or identifiable natural person, household or device.

“Documentation” means the user guides, online help, and release notes, provided or made available by Rectangle Health to Customer regarding the use or operation of the Services.

“Fees” means the amount of fees and charges payable to Rectangle Health by Customer under this MSA, as set forth in an applicable Exhibit, Order Form, addendum, exhibit, or underlying document to the MSA.

“Fee Schedule” means a list of the applicable Fees for a particular Service.

“Order Form” means the order, schedule, quotation, statement of work, or other document(s) by which Customer orders any of the Services pursuant to this MSA.

“Other Services” means all technical and non-technical professional services identified in an Order Form and performed or delivered by Rectangle Health under this MSA, consisting solely of implementation services, implementation support, best practices consultations, integration efforts, and training and education services, in each case which are provided on a non-work for hire basis and documented in statements of work mutually agreed to by the parties. For purposes of clarity, Other Services does not include the SaaS Services or the Payment Services (as defined herein).

“Partner” means a reseller or distributor that has an agreement with Rectangle Health to resell any of the Services.

“Payment Services” means the Services offered as merchant services, as listed in an Order Form.

“Required Software” means, if applicable to the SaaS Services to which a Customer has subscribed, a virtual machine that connects Customer’s target Sources using public APIs, connectors, and integrations to the SaaS Services. If applicable, Required Software will be identified in the relevant Documentation.

“SaaS Services” means the specific Rectangle Health internet-accessible software-as-a-service offering identified in an Order Form and hosted by Rectangle Health, its affiliates or service providers and made available to Customer over a network on a term-use basis, as further described in Exhibit A.

“Security Incident” means any unauthorized access or disclosure, or accidental loss, misuse, destruction, acquisition of, or damage to Sensitive Data for which a Party has responsibility, that has occurred, or that is or may impact performance or receipt of services or obligations under this MSA to the other Party.

“Security Requirements” means any and all state, federal and industry laws and regulations relating to protection and privacy of Sensitive Data, as defined herein, including without limitation all security protocols, advisories, standards and guidelines promulgated from time to time by the payment networks, and the Payment Card Industry Data Security Standard (PCI-DSS).

“Sensitive Data” means any data, including Customer Data, that constitutes sensitive personal data or like terms under applicable data privacy laws, intellectual property, proprietary business models, and any data which may be subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, the PCI-DSS, or similar laws, including social security or other government-issued identification numbers, medical or health information, account security information, individual financial account information, credit/debit/gift or other payment card information, account passwords, individual credit and income information.

“Services” means the SaaS Services, the Payment Services and the Other Services that Rectangle Health provides at present and in the future.

“Source” means, if applicable to the SaaS Services, a Customer-managed target system for reading data from and, if supported by the specific system, writing changes to user accounts. The connection to a target system can be managed via a direct connector or a flat file.

“Term” means that period(s) specified in an Order Form and Section 5 of this MSA during which Customer will have access to and use of the Services, as such may be renewed or extended under the applicable Order Form.

“Third-Party Service Provider” means an entity engaged by Customer to provide third-party services that are integrated with the Services and which Customer may access via the Services. Rectangle Health will not be a party to any agreement Customer may have with the Third-Party Service Provider and is not a provider of any such services.

“Trademarks” means all common law or registered trademark(s), service mark(s), trade name(s) and trade dress rights and/or similar or related rights under any laws of any country or jurisdiction, including but not limited to the United States of America whether existing now or hereafter adopted.

“User” means an employee or independent contractor of Customer that Customer authorizes to use the SaaS Services on Customer’s behalf.

## 2. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS

a. **Customer Responsibilities.** Customer is responsible for all activities conducted by it or through the accounts of its Users on the SaaS Services. Except for Rectangle Health's obligations described in Section 7 (Confidentiality) and Section 8 (Data Security and Processing), Customer shall (1) pay all applicable Fees and have sole responsibility for the accuracy, security, quality, and legality of the Customer Data and the means by which Customer acquired the Customer Data and the right to provide it for the purposes of this MSA (including the receipt of all necessary permissions from individuals and other third parties to provide the Customer Data under this MSA); (2) be responsible for the security and confidentiality of Customer's and its Users' account information; (3) be responsible for maintaining a back-up of all Customer Data; and (4) prevent unauthorized access to, or use of, the Services, and notify Rectangle Health promptly of any such unauthorized access or use.

b. **Compliance with Laws.** Customer shall comply with all applicable laws in connection with its use of the Services, collection and other processing of all Customer Data, and performance under this MSA, including those laws related to employment, data privacy and protection, and international activities. Customer acknowledges that Rectangle Health exercises no control over the Customer Data transmitted by Customer or Users to or through the Services. Rectangle Health may impose limits on the use or access to the Services as required by applicable law.

c. **Restrictions.** Customer and its Users shall not, and shall not permit any third party to: (1) copy or republish the Services; (2) make the Services available to any person other than Users; (3) rent, lend, sell, sublicense, or use the Services to provide service bureau, time-sharing or other services to third parties; (4) send or store any Sensitive Data, which such Sensitive Data is not necessary for Rectangle Health to provide the Services, or connect to the Services in any country that has data residency or data transmission restrictions, including, but not limited to any countries restricted by the U.S. government; (5) send or store viruses, spyware, ransomware, timebombs, Trojan horses, or other harmful or malicious code, or files to or in connection with the Services; (6) send or store infringing, offensive, harassing or otherwise unlawful material in connection with the Services; (7) modify or create derivative works based upon the Services or Documentation; (8) remove, modify, or obscure any copyright, trademark, or other proprietary notices contained in the Services or Documentation; (9) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code used or embodied in the SaaS Services, which includes the related algorithms, methods, and techniques; (10) access or use the Services or Documentation in order to build a similar or competitive product, or (11) exploit the Services or Documentation in any unauthorized way whatsoever, including by trespassing or burdening network capacity. If for some reason these restrictions are prohibited by applicable law or by an agreement Rectangle Health has with one of its licensors, then the activities are permitted only to the extent required to comply with such law or agreement.

## 3. INTELLECTUAL PROPERTY

a. **Ownership and Reservation of Rights of Rectangle Health Intellectual Property.** Rectangle Health, its affiliates and its licensors own and, except for the limited rights expressly granted to Customer under this MSA, retain all right, title, and interest in and to the Services, Trademarks, Documentation and any other materials provided by Rectangle Health or its licensors under this MSA, including all modifications and derivative works related thereto and intellectual property rights therein. No rights are granted to Customer under this MSA other than expressly set forth herein.

b. **Rights in Customer Data.** As between Rectangle Health and Customer, Customer owns the Customer Data. Customer hereby grants and agrees to grant to Rectangle Health and its affiliates a worldwide, non-exclusive, transferable, sublicensable, royalty-free license to host, copy, transmit, display, and process the Customer Data as reasonably necessary to (1) provide the Services to Customer and (2) monitor, modify, and improve (including develop) the Services; *provided, however*, that with respect to any such Customer Data that constitutes Customer Personal Data, the use described in (2) shall not include building or modifying household or consumer profiles, or cleaning or augmenting data acquired from another source.

c. **Feedback.** To the extent Customer or any of its Users provides any suggestions for modification, improvement or other comments, code, information, know-how, or other feedback (whether oral or written) relating to the Services ("Feedback"), Customer hereby grants to Rectangle Health a perpetual, irrevocable, worldwide, non-exclusive, transferable, sublicensable, royalty-free license to use the Feedback in any manner Rectangle Health sees fit without accounting or other obligation.

d. **Statistical Usage Data.** Rectangle Health may collect, retain, and use, during and after the Term for purposes of its business, usage data that is derived from the operation of the Services, including patterns identified through the use of the SaaS Services and algorithms, log data, and data regarding the performance and availability of the Services ("Usage Data"). If Rectangle Health provides Usage Data to any third party (for example, a report on the aggregate number of identities governed with the Services), such Usage Data shall be aggregated and anonymized so as not to disclose Customer's or any User(s) identity.

#### 4. SERVICE ORDERS AND PAYMENT

a. **Service Orders.** Customer may purchase Services by either (1) entering into an Order Form with Rectangle Health or (2) entering into an Order Form with a Partner that is subsequently acknowledged by Rectangle Health in writing or following notification of an Order Form to Rectangle Health from the Partner, Rectangle Health sends a delivery notice to Customer via email. Each Order Form with Rectangle Health shall be signed by both Customer and Rectangle Health or issued by Rectangle Health and acknowledged by Customer in writing to incorporate by reference the applicable Order Form and subsequently accepted by Rectangle Health. All Services purchased by Customer through either Rectangle Health or a Partner shall be governed exclusively by this MSA and the applicable Order Form. Rectangle Health may adjust the pricing for the Services with sixty (60) days prior notice to Customer.

b. **Fees; Invoicing and Payment**

(1) Direct Purchases from Rectangle Health. For direct purchases with Rectangle Health, the Customer shall pay to Rectangle Health all applicable Fees as shall be set forth in the applicable Order Form. All Fees are exclusive of sales and use taxes, value-added taxes (VAT), or similar charges. Unless otherwise provided in the Order Form, Rectangle Health shall invoice Customer for all Fees described therein on or promptly following the Order Form effective date. Unless otherwise provided in the Order Form, Rectangle Health shall start invoicing Customer for all applicable Fees upon the sooner of: (a) the day after the Services are installed on Customer's systems or (b) no more than sixty (60) days after the last Party signs this Agreement. Customer shall pay all invoices (except to the extent of any charges then under reasonable and good faith dispute) within thirty (30) days from date of invoice. Except as expressly provided otherwise herein, Fees are non-refundable, non-cancellable and not subject to set-off. All Fees shall be stated in and paid by the Customer in the currency stated in each Order Form. If any Fees (except with respect to charges then under reasonable and good faith dispute) remain unpaid by their due date, in addition to any other rights or remedies it may have under this MSA or by matter of law, (a) Rectangle Health reserves the right to suspend the Services upon thirty (30) days written notice to Customer, until such amounts are paid in full, and (b) any such unpaid Fees may accrue, at Rectangle Health's discretion, interest at the rate of the lesser of one and one-half (1.5%) percent of the outstanding balance per month or the maximum rate permitted by law from the date such Fees were due until the date paid. Further, Customer shall be responsible for all costs and expenses associated with Rectangle Health's collection of such Fees, including reasonable attorneys' fees incurred by Rectangle Health in such collection efforts. Suspension of the Services under this section shall not release Customer of its payment obligations under this MSA.

(2) Purchases Through a Partner. For any Services purchased by Customer through a Partner, the pricing and payment terms are established through an order entered into by and between Customer and such Partner in a document similar to an Order Form ("Partner Order") and all payments will be made directly to Partner. A Partner Order may also be effectively issued through a separate agreement with Partner (e.g., a Partner Referral Agreement or a Partner Reseller Agreement). If a Partner is entitled to terminate or suspend any Services

purchased by Customer through such Partner pursuant to the Partner Order and notifies Rectangle Health of such, Rectangle Health may suspend or terminate the Services identified by such Partner. Subsequently, if Partner notifies Rectangle Health that Customer is entitled to reinstatement of any Services purchased by Customer through such Partner pursuant to the Partner Order, and Customer is otherwise in compliance with the terms of this MSA, Rectangle Health shall reinstate such Services as soon as reasonably practicable. Rectangle Health shall not be liable to Customer or any third party for any liabilities, claims, or expenses arising from or relating to any suspension or termination of Services in accordance with this section.

c. **Expenses.** Unless otherwise specified in an Order Form, Customer will reimburse Rectangle Health for all pre-approved, out-of-pocket travel and related expenses incurred in performing the Services. Rectangle Health will include documentation of all such expenses with each related invoice.

d. **Taxes.** Customer is responsible for payment of all sales and use taxes, value added taxes (VAT), or similar charges relating to Customer's purchase and use of the Services, excluding taxes based on Rectangle Health's net income. If Rectangle Health has a legal obligation to pay or collect taxes for which Customer is responsible under this MSA, the appropriate amount shall be computed based on Customer's address listed under Customer Information above and invoiced to and paid by Customer, which amounts are in addition to the Fees for the Services, unless Customer provides Rectangle Health with a valid tax exemption certificate authorized by the appropriate taxing authority.

e. **Payment Services Fees.** Fees for Payment Services will be deducted from settled transaction amounts owed to Customer. Notwithstanding any other provision of this Agreement, Customer will be responsible for all amounts imposed or assessed to Customer or Rectangle Health in connection with this Agreement by third parties including, but not limited to, a payment card network. Such amounts include, but are not limited to, fees, fines, assessments, loss allocations, registrations, costs, expenses, certifications expenses and other amounts, however labeled or defined, imposed by card networks or other third parties as a result of or in any way relating to Customer's actions, omissions or use of the Payment Services. Customer agrees that all such obligations and amounts incurred will be deemed direct, not indirect or consequential, damages, and will be collectible from Customer notwithstanding any provision in this Agreement to the contrary. Any changes or increases in such amounts will automatically become effective upon notice to Customer in accordance with Rectangle Health's standard operating procedure and will be immediately payable by Customer when assessed by Rectangle Health.

## 5. TERM, SUSPENSION, AND TERMINATION

a. **Term.** The term of this MSA (the "Term") shall begin on the Effective Date and continue for the period of three (3) years or as otherwise set forth in the applicable Order Form. Following the end of the initial Term, the Services shall automatically renew for the same length as the initial Term unless either Party gives written notice at least thirty (30) days prior to the end of the initial Term, or any renewal Term, of its intention to terminate any of the Services. Rectangle Health shall have the right to terminate this MSA upon thirty (30) days' notice to Customer.

b. **Termination Fees.** Customer shall not have the right to terminate this MSA for convenience. If Customer terminates this MSA, or any underlying Order Form, prior to the end of the Term, Customer shall remain liable for all Fees due to Rectangle Health for the remainder of the current Term and Customer shall not be entitled to any refund or credit for any unused Term. For purposes of this section, the Fees due for the remainder of the current term shall be calculated as the average total monthly revenue to Rectangle Health from last three (3) months (or the last month if terminated before month 3 of the Term) prior to termination multiplied by the number of remaining months of the current term.

c. **Suspension for Ongoing Harm.** Rectangle Health reserves the right to suspend delivery of the Services if Rectangle Health reasonably concludes that Customer or a User's use of the Services is causing immediate and ongoing harm to Rectangle Health or the security, integrity, or availability of the Services. Rectangle Health will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension. In the extraordinary case that Rectangle Health must suspend delivery of the Services,



Rectangle Health shall promptly notify Customer of the suspension and the Parties shall diligently attempt to resolve the issue. Rectangle Health shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Services in accordance with this section. Nothing in this section will limit Rectangle Health's other rights under this Agreement.

d. **Retrieval of Customer Content.** Upon request by Customer made at least thirty (30) days prior to the effective date of the termination of this MSA, Rectangle Health will make available to Customer, subject to Rectangle Health's cost, for a maximum of thirty (30) days following such termination for download a file of the Customer Data then-currently stored in the Services ("Customer Content"). After such thirty (30)-day period, Rectangle Health shall have no obligation to maintain or provide any Customer Content and shall thereafter, unless legally prohibited, be entitled to delete all Customer Content; provided, however, that Rectangle Health will not be required to remove copies of the Customer Content from its backups until such time as the backup copies are scheduled to be deleted in the normal course of business; provided further that in all cases Rectangle Health will continue to protect the Customer Content in accordance with Section 7 (Confidentiality). Additionally, during the Term, Customer may extract Customer Content from the Services using Rectangle Health's standard web services.

e. **Effect of Termination.** Upon expiration or termination of this MSA, all licenses to the Required Software and access to the Services granted to Customer under this MSA and all Order Forms placed hereunder shall immediately terminate and Customer will cease using the Services, (except as permitted under Section 5.d. (Retrieval of Customer Content)) and Confidential Information. Expiration or termination of this MSA for any reason shall not relieve Customer of the obligation to pay all future amounts due under all Order Forms. Sections 2 (Customer Responsibilities and Restrictions), 3 (Intellectual Property), 4 (Service Orders and Payment), 5 (Term, Suspension, and Termination), 6 (Warranties), 7 (Confidentiality), 9 (Indemnification), 10 (Limitations of Liability) and 11 (General Provisions) shall survive the expiration or termination of this MSA for any reason.

## 6. WARRANTIES AND REMEDIES, AND DISCLAIMERS

### a. **Warranties and Remedies**

(1) General. Each Party represents and warrants that it has the legal power and authority to enter into and perform under this MSA. Rectangle Health shall comply with all laws applicable to Rectangle Health in its performance hereunder.

(2) Services. Rectangle Health warrants that during the Term the Services will perform substantially in accordance with the Documentation. As Customer's exclusive remedy and Rectangle Health's sole liability for breach of any warranties set forth in this Section, Rectangle Health shall correct the non-conforming Services at no additional charge to Customer or (b) in the event Rectangle Health is unable to correct such deficiencies after good-faith efforts and within a commercially reasonable time, Customer shall be entitled to terminate the applicable Services and Rectangle Health will refund Customer a pro-rata portion of any prepaid Fees attributable to the defective Services paid by Customer from the date Rectangle Health received the following notice. To receive warranty remedies, Customer must promptly report deficiencies in writing to Rectangle Health, but no later than thirty (30) days of the first date the deficiency is identified by Customer. The warranty set forth in this Section 6 shall apply only if the applicable Services has been utilized in accordance with the Documentation, this MSA, and applicable law.

b. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RECTANGLE HEALTH MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, ACCURACY OF INFORMATIONAL CONTENT, SYSTEMS INTEGRATION, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT OR OTHERWISE. RECTANGLE HEALTH DOES NOT WARRANT THAT THE SAAS SERVICES WILL BE ERROR FREE OR UNINTERRUPTED. RECTANGLE HEALTH MAKES NO WARRANTY REGARDING ANY NON-RECTANGLE HEALTH APPLICATION WITH WHICH THE SAAS

SERVICES MAY INTEROPERATE. THE LIMITED WARRANTIES PROVIDED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO CUSTOMER IN CONNECTION WITH THE SUBJECT MATTER OF THIS MSA.

## 7. CONFIDENTIALITY

a. As used in this MSA and defined in Section 1, "Confidential Information" means all proprietary, non-public information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), directly or indirectly, which, (1) if in written, graphic, machine-readable or other tangible form, is marked as "confidential" or "proprietary," (2) if disclosed orally or by demonstration, is identified upon initial disclosure as confidential and is confirmed in writing to the Receiving Party to be "confidential" or "proprietary" within thirty (30) days of such disclosure, or (3) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself, including the Customer Data, terms of this MSA, each Order Form, the Services and Documentation, business and marketing plans, technology and technical information, product designs, and business processes of either Party.

b. Confidential Information does not include information: (1) known publicly at the time of the disclosure by the Disclosing Party or becomes known publicly after disclosure through no fault of the Receiving Party; (2) known to the Receiving Party at the time of disclosure by the Disclosing Party due to previous receipt from a source that was not bound by confidentiality obligations to the Disclosing Party at that time; or (3) independently developed by the Receiving Party without use of or reference to the Confidential Information as demonstrated by the written records of the Receiving Party.

c. The Receiving Party shall not (1) use the Confidential Information of the Disclosing Party except to exercise its rights and perform its obligations under this MSA or (2) disclose such Confidential Information to any third party, except those of its employees, service providers, agents, and representatives who are subject to confidentiality obligations at least as stringent as the obligations set forth herein and have a "need to know" in order to carry out the purpose of this MSA. The Receiving Party shall use at least the same degree of care it uses to protect its own confidential information of like nature, but not less than a reasonable degree of care, to protect the Confidential Information of the Disclosing Party.

d. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent such disclosure is required by law, court order or other governmental authority; provided that the Receiving Party shall use commercially reasonable efforts to promptly notify the Disclosing Party prior to such disclosure to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

## 8. DATA SECURITY AND PROCESSING

a. **Security.** Rectangle Health will maintain administrative, physical, and technical safeguards designed to protect the security and confidentiality of Customer Data, including measures designed to prevent unauthorized access, use, modification, or disclosure of Customer Personal Data. With respect to the Services, Rectangle Health will operate in conformance with the physical, technical, operational, and administrative measures and protocols regarding data security that are set forth in any applicable report or received from its third-party auditors.

b. **Notification of Incidents.** If Customer becomes aware of or suspects any actual or potential unauthorized access, acquisition, or compromise of the confidentiality, integrity, or availability of Rectangle Health's data or network (including any circumstances that would render such access or use reasonably possible, and any breach of this Agreement), Customer will (1) immediately (and no later than within 24 hours) notify Rectangle Health at [ITsecurity@rectanglehealth.com](mailto:ITsecurity@rectanglehealth.com), (2) consult and cooperate with Rectangle Health's investigations and notices reasonably elected by Rectangle Health, (3) provide any information reasonably requested by Rectangle Health, and (4) execute common-interest and similar agreements reasonably requested by Rectangle Health.

## 9. INDEMNIFICATION

a. **Indemnification by Rectangle Health.** Subject to Section 9.c. (Indemnity Process), Rectangle Health will defend Customer from any and all claims, demands, suits, or proceedings brought against Customer by a third party alleging that the Services, as provided by Rectangle Health to Customer under this MSA, infringe any patent, copyright, or trademark or misappropriate any trade secret of that third party (each, an "Infringement Claim"). Rectangle Health will indemnify Customer for all damages and costs (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, authorized arbitral panel, or paid to a third party in accordance with a written settlement agreement signed by Rectangle Health, in connection with an Infringement Claim. In the event any such Infringement Claim is brought, or in Rectangle Health's reasonable opinion is likely to be brought, Rectangle Health may, at its option: (1) procure the right to permit Customer to continue use of the Services, (2) replace or modify the Services with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (3) if the foregoing options are not reasonably practicable, terminate the applicable Order Form and repay to Customer any prepaid Fees paid by Customer under such Order Form to Rectangle Health with respect to any period of time following the termination date. Notwithstanding the foregoing, Rectangle Health shall have no liability for any Infringement Claim of any kind to the extent that it relates to (a) modification of the Services by a party other than Rectangle Health, (b) use of the Services in combination with any other product, service, or device, if the infringement would have been avoided by the use of the Services without such other product, service, or device, or (c) use of the Services other than in accordance with the Documentation and this MSA. The indemnification obligations set forth in this Section 9.a are Customer's exclusive remedy and Rectangle Health's sole liability with respect to Rectangle Health's infringement or misappropriation of third-party intellectual property rights of any kind.

b. **Indemnification by Customer.** Subject to Section 9.c (Indemnity Process) below, Customer will defend Rectangle Health and its affiliates from any and all claims, demands, suits, or proceedings brought against Rectangle Health by a third party alleging a violation of a User's or third party's rights arising from or related to the Customer Data, including the Customer's provision of the Customer Data to Rectangle Health or its affiliates or their respective use of the Customer Data in connection with providing the Services in accordance with this MSA. Customer will indemnify Rectangle Health for all damages and costs (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, authorized arbitral panel, or paid to a third party in accordance with a written settlement agreement signed by Customer, in connection with any such claims, demands, suits, or proceedings.

c. **Indemnity Process.** The Party seeking indemnification under this Section 9 ("Indemnitee") must (1) promptly notify the other Party ("Indemnitor") of the claim (provided that any failure to provide such prompt written notice will only relieve the Indemnitor of its obligations to the extent its ability to defend such claim is materially prejudiced by such failure), (2) give the Indemnitor sole control of the defense and settlement of the claim (provided that Indemnitor shall not consent to entry of any judgment or admission of any liability of the Indemnitee without the prior written approval of the Indemnitee), and (3) provide reasonable assistance, cooperation, and required information with respect to the defense and settlement of the claim, at the Indemnitor's expense. At its own expense, the Indemnitee may retain separate counsel to advise the indemnitee regarding the defense or settlement of the claim.

## 10. LIMITATIONS OF LIABILITY

a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL RECTANGLE HEALTH'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS MSA EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER UNDER THE ORDER FORM GIVING RISE TO THE CLAIM FOR THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT, TORT, OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY.

b. NOTWITHSTANDING THE LIMITATIONS SET FORTH IN THIS SECTION, CUSTOMER DOES EXCLUDE NOR LIMITS ITS LIABILITY FOR ITS:



- (1) INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 (INDEMNIFICATION);
- (2) DAMAGES RESULTING FROM ITS GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD;
- (3) DAMAGES RESULTING FROM ITS BREACH OF SECTION 7 (CONFIDENTIALITY); OR
- (4) PAYMENT OBLIGATIONS

c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL RECTANGLE HEALTH OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING (BY WAY OF EXAMPLE AND NOT AN EXHAUSTIVE LIST), LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF USE, OR OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MSA, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

d. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN ARE REFLECTED IN THE PRICING AND BUT FOR SUCH LIMITATIONS AND EXCLUSIONS, RECTANGLE HEALTH WOULD NOT HAVE MADE THE SERVICES AVAILABLE TO CUSTOMER.

## 11. GENERAL PROVISIONS

a. **Assignment.** This MSA is binding upon the Parties and their respective successors, representatives, and assigns. Neither Party may assign or transfer this MSA, by operation of law or otherwise, without first obtaining prior written consent of the other Party; provided, however, Rectangle Health may assign this MSA without such consent to a purchaser in a merger or sale of all or substantially all of its assets.

b. **Notices.** Except as otherwise expressly permitted in this MSA, notices under this MSA shall be in writing and shall be deemed to have been given: (1) five (5) business days after mailing if sent by registered or certified U.S. mail, (2) when personally delivered, or (3) one (1) business day after deposit for overnight delivery with a recognized courier for U.S. deliveries (or three (3) business days for international deliveries). All notices shall be sent to the other Party at the address set forth on the first page of this MSA.

c. **Force Majeure Event.** If the performance of this MSA or any obligation hereunder (other than obligations of payment) is prevented, delayed or restricted by reasons beyond the reasonable control of a Party, including acts of God, labor disputes or other industrial disturbances, fire, explosion, electrical or power outages, utilities or other telecommunications failures, earthquake, flood, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism (including cyber terrorism), war, computer related attacks or hacking, acts or omissions of Internet traffic carriers, acts or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the provision of the Services), the Party so affected shall be excused from such performance and liability to the extent of such prevention, delay or restriction.

d. **Equitable Relief.** The parties agree that a material breach of Section 2.c (Restrictions) or Section 7 (Confidentiality) would cause irreparable injury to the non-breaching Party for which monetary damages alone would not be an adequate remedy, and therefore the non-breaching Party shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.

e. **Entire Agreement.** This MSA together with the documents incorporated by reference contain the entire agreement of the Parties and supersede all previous oral and written communications, representation, understandings, and agreements by the parties concerning the subject matter of this MSA. If there is any conflict between the terms of this MSA and any Order Form or similar ordering document with a Partner, the terms of this MSA shall control unless Rectangle Health and Customer expressly agree otherwise in the applicable Order Form or other document signed by both parties by specific reference to this section and the section(s) of this MSA that are modified. Where Rectangle Health is required to "click through" or otherwise accept any online terms as a condition to its provision or receipt of Services, such terms are not binding and shall not be deemed to modify this MSA. Any failure to enforce any provision of this MSA shall not constitute a waiver thereof or of any other provision and a waiver of any breach of this MSA shall not constitute a waiver of any other or subsequent breach.

f. **Publicity.** During the term of this MSA, Rectangle Health may include Customer's name and logo in its customer lists, including on its website. To the extent Customer provides standard trademark usage guidelines, Rectangle Health shall use Customer's name and logo in accordance with such guidelines.

g. **Export Laws.** Export laws of the United States and any other relevant local export laws apply to the Services. Customer agrees that such export laws govern its use of the Services (including technical data) and any materials provided under this MSA, and Customer agrees to comply with all such export laws. Customer agrees that no data, information, software programs, or other materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws. Each Party represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and Customer will not access or use the Services in any manner that would cause either Party to violate any U.S. or international embargo, export control law, or prohibition.

h. **Independent Contractors; No Third-Party Beneficiaries.** The Parties have the status of independent contractors, and nothing in this MSA nor the conduct of the Parties shall place the Parties in any other relationship. Except as provided in this MSA, neither Party shall be responsible for the acts or omissions of the other Party or the other Party's personnel. There are no third-party beneficiaries under this MSA.

i. **Governing Law, Attorneys' Fees, and Severability.** This MSA is deemed to be a contract made under the laws of the State of New York and will be construed in accordance with the laws of New York without regard to principles of conflicts of law. Any claim arising out of this MSA shall be exclusively litigated in the state or federal courts located in Westchester County, New York. Each Party irrevocably waives any rights to a trial by jury in any action or proceeding between them.

j. **Severability.** If any term or condition of this MSA is held invalid or unenforceable by a court (or arbitrator) of competent jurisdiction, such term shall be reduced or modified by such court (or arbitrator) to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it shall be severed and the remaining terms of this Agreement shall be interpreted so as to give maximum validity and enforceability to this MSA.

k. **Anti-Bribery/Corruption.** Neither Party (1) has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this MSA, or (2) has made, paid, given, or agreed to make, pay, or give any bribe, kickback, payment, gift, or thing of value to any foreign government official or other person in violation of applicable laws related to the prevention of corruption, including the U.S. Foreign Corrupt Practices Act of 1977, as amended ("Anti-Corruption Laws") in connection with this MSA. Both Parties agree to comply with Anti-Corruption Laws in relation to this MSA. If either Party learns of any violation of the foregoing restriction, such Party will use reasonable efforts to promptly notify the other Party.

l. **Interpretation.** For purposes of interpreting this MSA, (1) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (2) unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this MSA as a whole and not to any particular section or paragraph; (3) the words "include" and "including" will not be construed as terms of limitation, and will therefore mean "including but not limited to" and "including without limitation"; (4) unless otherwise specifically stated, the words "writing" or "written" mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; and (5) the captions and section and paragraph headings used in this MSA are inserted for convenience only and will not affect the meaning or interpretation of this MSA.

m. **Waiver.** The waiver by either Party of any default, breach or obligation of this MSA shall be ineffective unless in writing and shall not constitute a waiver of any subsequent breach or default.

n. **Execution.** This MSA may be executed in multiple counterparts, each when executed will be an original, and all when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this MSA by facsimile or other electronic transmission (including via pdf) will be effective as delivery of a manually executed counterpart.

o. **Representation.** Each Party represents and warrants that it has the legal capacity and authority to enter into and perform its obligations under this MSA and that those obligations shall be binding without the approval of any other person or entity. Each person signing this MSA on behalf of a Party represents and warrants that they have the legal capacity and authority to sign this MSA on behalf of that Party.

## Exhibit A

### SERVICE DESCRIPTIONS AND TERMS

**1. SERVICE DESCRIPTIONS.** Practice Management Bridge® (“PMB”) is Rectangle Health’s platform that enhances the patient experience, reduces administrative burden, boosts revenue, and simplifies compliance. The Services provided through PMB (which may be modified by Rectangle Health in its sole discretion from time to time) include:

Bridge Payments	
<b>Summary of Service:</b>	<p>Payments is the enablement of merchant credit card processing and acceptance within the PMB platform and software. More information about the features and offerings of this Service is located at <a href="https://www.rectanglehealth.com/solutions/practice-management-bridge/">https://www.rectanglehealth.com/solutions/practice-management-bridge/</a>. May include Patient Financing, a non-recourse financing program (offered through Healthcare Finance Direct, LLC) for patients to cover the cost of medical or dental services, if approved. More information about the features and offerings of this Service is located at <a href="https://www.rectanglehealth.com/solutions/patient-financing-solution/">https://www.rectanglehealth.com/solutions/patient-financing-solution/</a>.*</p> <p><i>* Applicants in bankruptcy, Fraud Alert or on the Terrorist Watch will be declined. Patients covered by government payor programs are not eligible for financing of a covered procedure. Such programs include Medicare, Medicaid, State Children’s Health Insurance Program (CHIP), Department of Defense TRICARE and TRICARE-for-Life programs (DOD TRICARE), Veterans Health Administration (VHA) programs, and the Indian Health Service (IHS) program.</i></p>

Bridge Compliance - OfficeSafe360	
<b>Summary of Service:</b>	<p>OfficeSafe360 is a comprehensive compliance and training solution geared to navigate healthcare practices through the complexities of HIPAA and OSHA compliance. More information about the features and offerings is located at <a href="https://www.rectanglehealth.com/resources/security-and-compliance/">https://www.rectanglehealth.com/resources/security-and-compliance/</a>.</p>

Bridge Engagement	
<b>Summary of Service:</b>	<p>Bridge Engagement is a complete patient-relationship and back-office management system on a cloud-based platform, with a HIPAA-compliant patient appointment notification, scheduling, engagement and practice management tools utilizing reminder calls, 2-way text, and email reminders. More information about the features and offerings of this Service is located at <a href="https://www.rectanglehealth.com/solutions/practice-management-bridge/patient-engagement/">https://www.rectanglehealth.com/solutions/practice-management-bridge/patient-engagement/</a>.</p>

**2. ADDITIONAL TERMS FOR SAAS SERVICES**

a. **Provision of SaaS Services.** During the Term, Rectangle Health grants Customer a limited, non-exclusive, non-transferrable (except as set forth in Section 11.a (Assignment) of this MSA), non-sublicensable right to access and use the SaaS Services in accordance with the Documentation, solely for Customer’s internal business operations, subject to the terms of this MSA. Customer agrees that its purchase of the Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Rectangle Health with respect to future functionality or features.

b. **Required Software.** Customer acknowledges that use of SaaS Services may require the installation of Required Software prior to using such SaaS Services. Customer agrees to install such Required Software, including any required updates if and when available. To the extent applicable to the SaaS Services, Rectangle Health hereby grants to Customer a limited, non-exclusive, non-transferable (except in accordance with Section 11.a), non-sublicensable license to install, execute, copy, display, or otherwise use the Required Software in accordance with the Documentation, solely in connection with the SaaS Services during the Term, in each case subject to the terms of this MSA.

c. **Users.** Customer will cause Users to abide by the terms of this MSA. Any action or omission of a User, which, if attributable to Customer would constitute a breach of this MSA by Customer, will be deemed to be a breach of this MSA by Customer. Rectangle Health may terminate or suspend any User’s access to the SaaS Services for any breach without notice.

## **Exhibit B**

### **BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is effective as of the date of the Master Services Agreement between the parties (the "MSA") by and between you, as set forth in the signatures below ("Covered Entity") and Retriever Medical/Dental Payments, LLC, d/b/a **Rectangle Health** ("Business Associate").

**WHEREAS** the Covered Entity possesses Protected Health Information that is protected under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), the Health Information Technology for Economic and Clinical Health Act, Public Law §111-5 and the regulations promulgated thereunder by the United States Department of Health and Human Services, including the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Parts 160 and 164, each as amended by the final rule known as the Omnibus Rule (collectively, "HIPAA");

**WHEREAS** the Covered Entity is permitted to use or disclose PHI (as defined below) only in accordance with HIPAA; and

**WHEREAS** the Business Associate may have access to and may receive and maintain PHI from Covered Entity in connection with its performance of Services to Covered Entity under the MSA.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this BAA and the business arrangements between the parties, and for other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

**1. DEFINITIONS.** All capitalized terms used but not otherwise defined in this BAA shall have the same meaning as those terms in HIPAA.

a. "Protected Health Information" or "PHI" means individually-identifiable health information transmitted or maintained in any form or medium that (1) is received by Business Associate from Covered Entity, (2) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (3) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity.

b. "Services" means the specific services described in the MSA.

**2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

a. **Use and Disclosure.** Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA, or as Required by Law.

b. **Safeguards.** Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI and that prevent the use or disclosure of such PHI other than as provided for by this BAA.

c. **Minimum Necessary.** Business Associate agrees to make reasonable efforts to limit use and/or disclosure of PHI to the minimum information necessary to accomplish the intended purpose of the use or disclosure.

d. **Mitigation.** Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA.

e. **Subcontractors.** Business Associate agrees to ensure that any Subcontractor to whom it provides PHI received from or created or received by Business Associate on behalf of Covered Entity, agrees to the same or similar restrictions and conditions that apply through this BAA to Business Associate with respect to such information.

f. **Access to PHI.** Because Business Associate does not maintain PHI in a Designated Record Set (as defined in 45 C.F.R. §164.501), Business Associate is not required to provide Covered Entity or an Individual access to PHI pursuant to 45 C.F.R. §164.524.

g. **Amendment of PHI.** Because Business Associate does not maintain PHI in a Designated Record Set, Business Associate is not required to provide PHI to Covered Entity for amendment or incorporate any such amendments in the PHI pursuant to 45 C.F.R. §164.526.

h. **Accounting of Disclosures.** Business Associate agrees to document and provide to Covered Entity, in the time and manner reasonably required by Covered Entity, disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI pursuant to 45 C.F.R. §164.528.

i. **Books and Records.** Business Associate agrees to make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, in a time and manner reasonably designated, for purposes of the Secretary determining Covered Entity's compliance with HIPAA.

j. **Reporting.** Business Associate agrees to promptly report to Covered Entity any Security Incident or other use or disclosure of the PHI not permitted by this BAA of which it becomes aware. If Business Associate discovers that a Breach of unsecured PHI has occurred, Business Associate shall promptly (but not later than thirty (30) days after it has knowledge that a Breach has occurred, unless sooner required under state law) notify the Covered Entity in accordance with the requirements of 45 CFR §164.410. Such notification shall include, to the extent possible, the identification of each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, used or disclosed during the Breach, with any other information required in a notification to the Individual, the media and/or the Secretary as applicable, including, a description of the Breach, the date of the Breach and its discovery, the types of unsecured PHI involved and a description of the Business Associate's investigation, mitigation and prevention efforts.

k. **Privacy Regulations.** To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of the Privacy Rule, Business Associate shall comply with the applicable requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

a. **Uses and Disclosures.** Except as otherwise expressly limited in this BAA, Business Associate may use and disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity and Business Associate, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.

b. **Management and Administration.** Except as otherwise expressly limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Except as otherwise expressly limited in this BAA, Business Associate may disclose PHI for disclosures that are Required By Law, or if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. **Data Aggregation.** Business Associate may use and disclose PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

d. **De-Identified Information.** Business Associate may de-identify PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, to perform the Services. Business Associate may use and disclose personal information received from Covered Entity that has been de-identified by Business Associate in



accordance with 45 C.F.R. §164.514(a) and (b). Business Associate's use and disclosure of such de-identified personal information will not be subject to the requirements set forth in this BAA.

#### 4. OBLIGATIONS OF COVERED ENTITY

a. **Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

b. **Individual Permission.** Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

c. **Restrictions on Uses or Disclosures.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction affects Business Associate's use or disclosure of PHI.

d. **Requests for Uses or Disclosures.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### 5. TERMINATION

a. **Term.** This term of this BAA shall be concurrent with the term of the MSA.

b. **Termination.** Upon either party's (the "Non-Breaching Party") knowledge of a material breach by the other party (the "Breaching Party"), the Non-Breaching Party may provide a reasonable opportunity for the Breaching Party to cure such breach within a reasonable time, and if the Breaching Party does not cure such breach within such time, the Non-Breaching Party may terminate this BAA. If the Breaching Party has terminated a material term of this BAA and cure is not possible, the Non-Breaching Party may immediately terminate this BAA.

c. **Effect of Termination.** Upon termination of this BAA, 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. This provision shall also apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. Notwithstanding the foregoing, 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 not feasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

#### 6. MISCELLANEOUS

a. **Regulatory References.** A reference in this BAA to a section in HIPAA means the section as in effect or as amended from time to time, and for which compliance is required.

b. **Confidentiality.** Business Associate agrees to maintain in confidence all information disclosed by Covered Entity in connection with the MSA, including, without limitation, information pertaining to patients, PHI and any other information marked or identified in writing as confidential at the time of disclosure ("Confidential Information"), and shall not use, disclose or grant the use of such Confidential Information without Covered Entity's written permission. Business Associate agrees to notify Covered Entity promptly upon discovery of any unauthorized use or disclosure of Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that, and only to the extent Business Associate can establish by written document, (1) has been known by Business Associate prior to disclosure of the information, (2) becomes widely known without the fault of Business Associate, (3) was obtained from a third party source, which had the right to possess and disclose the information free of any confidentiality obligations, or

(4) has been independently developed by employees or others on behalf of Business Associate without reference to or reliance upon the Confidential Information.

c. **Primacy.** To the extent any provisions of this BAA conflict with the provisions of any other agreement between the parties, this BAA shall control with respect to the subject matter of this BAA.

d. **Amendment.** This BAA may not be modified, nor shall any provision be waived or amended, except in writing duly accepted by the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

e. **Survival.** The respective rights and obligations of the parties shall survive the termination of this BAA.

f. **Interpretation.** Any ambiguity in this BAA shall be resolved to permit compliance with HIPAA.

g. **No Third-Party Beneficiaries.** Nothing expressed or implied in this BAA is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, obligations, remedies or liabilities.

h. **Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

i. **Independent Contractors.** No provision of this BAA is intended to create, nor shall be deemed or construed to create any employment, agency or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this BAA. The parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either Covered Entity or Business Associate that Business Associate constitute an "agent" under such common law.

*THE PARTIES ACKNOWLEDGE THEY HAVE READ AND UNDERSTAND THIS BAA AND REPRESENT EACH OF THEM IS AUTHORIZED TO LEGALLY BIND SUCH PARTY BY ITS TERMS.*