

## **REMOTE PHYSIOLOGIC MONITORING AGREEMENT**

This Remote Physiologic Monitoring Management Services Agreement (“Agreement”) is made and entered into effective as of \_\_\_\_\_ (the “Effective Date”) by and between **SYNSORMED, INC.**, a Florida corporation (“SynsorMed”), and \_\_\_\_\_, defined as the “Company”

### **RECITALS**

WHEREAS, the Company employs or otherwise contracts with physicians and other qualified healthcare professionals who are qualified by education, training, licensure/regulation, and facility privileging (when applicable) to furnish professional medical services (the “Physicians”); and

WHEREAS, the Company desires to provide medically necessary chronic care remote physiologic monitoring (“RPM”) services to its patients being treated for one or more chronic conditions (the “Patients”); and

WHEREAS, SynsorMed is a care management technology services provider which assists health care practitioners in the delivery of RPM services covered under Current Procedural Terminology (“CPT”) codes 99453, 99454, 99457, and 99458 as well as any other related care management codes; and

WHEREAS, the Company desires to engage SynsorMed, on an independent contractor basis, to assist in the delivery of RPM services to Patients by facilitating delivery of appropriate RPM equipment to Patients, equipment set-up, Patient education, recording of digitally transmitted physiologic data of Patients, generating reports from time to time, facilitating technical assistance as needed, leasing the services of Personnel to perform RPM treatment management, providing Billing and Collection Services, and providing Access to the Software Platform pursuant to the terms and conditions hereinafter set forth (collectively, the “Services”).

NOW, THEREFORE, for and in consideration of the mutual agreements, terms, covenants and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

#### **1. Provider of Services.**

1.1. Subject to applicable laws and requirements governing the Company of medicine, the Company hereby appoints SynsorMed as its provider of the Services during the Term and SynsorMed accepts such appointment, subject to the provisions of this Agreement. The Company shall not engage any person or entity other than SynsorMed to provide any of the Services during the Term.

#### **2. Software Platform.**

2.1. SynsorMed grants to the Company a non-exclusive, revocable, non-transferable, limited right and license to install, use, access, run, or otherwise interact with (collectively, “Access”) copies of the Software Platform during the Term for its internal business purposes only. “Software Platform” means the SynsorMed software program that supports delivery of RPM (including all information that is presented to the Company as part of such software program, but excluding protected

health information received from, or created or received by SynsorMed on behalf of, the Company) in the version or state existing as of the Effective Date, including any upgrades, modified versions, or updates thereto.

2.2. Each individual who is designated by the Company to Access the Software Platform on its behalf (the “Authorized Users”) will be assigned unique login credentials, which are not to be shared with any other individual, business, or organizations. The Company will assure that all Authorized Users comply with the provisions of this Agreement. The Company will use commercially reasonable measures to prevent unauthorized Access of the Software Platform.

2.3. The Company will not: (i) post any content to the Software Platform that contains malicious code; (ii) attempt to gain access to anyone else’s data contained within the Software Platform; (iii) copy or reproduce any part of the Software Platform for use on another computer system, including to build a competitive product; or (iv) attempt to reverse engineer any feature of the Software Platform.

2.4. Except as expressly granted to Company in this Agreement, SynsorMed reserves all of its right, title, and interest in and to the Software Platform. Further, any and all data derived from the Company’s use of the SynsorMed Platform, shall be the exclusive property of SynsorMed, and as such, SynsorMed shall be free to use such data for the purposes of product development, and any other use SynsorMed deems suitable

### 3. Initial Set-Up, Monthly Monitoring, and Technical Assistance.

3.1. When RPM is ordered by a Physician for a Patient of the Company, the Company shall transmit complete and accurate intake information to SynsorMed, as reasonably designated by SynsorMed from time to time, after which SynsorMed will facilitate delivery of appropriate RPM equipment to the Patient, equipment set-up, and Patient education.

3.2. SynsorMed will facilitate recording of the Patient’s digitally transmitted physiologic data, generate reports to the Company from time to time, and facilitate technical assistance for Authorized Users or Patients as needed during the commercially reasonable hours and times established by SynsorMed.

3.3. The Company is responsible for obtaining Patient consent to participate in RPM in accordance with all applicable laws and payor requirements.

### 4. Personnel.

4.1. SynsorMed shall lease to the Practice, and the Practice hereby agrees to lease from SynsorMed, the services of all qualified healthcare professionals and clinical staff (“Personnel”) as necessary and appropriate for the delivery of RPM treatment management services by the Practice during the Term.

4.2. While the Personnel shall be employees of SynsorMed, the Personnel shall provide services as the leased employees of the Practice. The Practice is responsible for facilitating Physician supervision of Personnel in accordance with all applicable laws and payor requirements. The Practice will ensure that a Physician exercises overall direction and control over all action taken by the Personnel in connection with the rendering of services by the Practice.

4.3. Subject to Physician supervision, overall direction, and control, the Personnel will perform RPM treatment management services on behalf of the Practice during the commercially reasonable hours and times established by SynsorMed with mutual agreement by the Practice, including analysis and interpretation of digitally collected physiologic data, interactive communication with the Patient or caregiver, and related consultation with the Practice as needed. The expectation is a minimum of 20 minutes per active account per month.

4.4. The Practice is solely responsible for the rendering of all professional medical services for its patients, including, but not limited to, the diagnosis and treatment of patients under the Practice's care.

4.5. SynsorMed shall remain the sole employer of the Personnel, notwithstanding the fact that the Practice and its Physicians exercise supervision over such Personnel from time to time. With respect to the Personnel, SynsorMed shall remain solely responsible for: (i) the establishment of initial salaries or wage rates, and of subsequent adjustments thereto; (ii) the payment of all wages, salaries, and other forms of compensation; (iii) the payment of all payroll, social security, and unemployment taxes; and (iv) the establishment of all personnel policies and employee benefit programs. SynsorMed shall have and retain full responsibility and authority for decisions regarding employment, discipline, termination, and reassignment of Personnel.

## 5. Compensation for Services.

5.1. At the end of 30 days from patient delivery, as compensation for the Services, the Company shall pay to SynsorMed a fee equal to \$\_\_\_\_\_ (the "Monthly Fee") per patient per month, regardless of the amount of actual time the Personnel are utilized by the Company, it being understood and agreed that such compensation represents the fair market value of the Services provided hereunder to the Company, with a pro rata Monthly Fee due for any partial month during which Services are provided for a Patient. It is understood these devices are not owned by the company.

5.2. The Monthly Fee does not include any applicable sales, use, services, or other taxes that may be assessed on the provision of the Services. Except as otherwise provided in this Agreement, the Company could potentially pay any taxes associated with the Services by reimbursing SynsorMed for the tax amount listed on an invoice or by making direct payment to the taxing authority.

5.3. Interest may be charged on any invoiced amount not paid within 15 days following the Company's receipt of the invoice at the rate of one percent (1%) per day, or the maximum rate permitted by applicable law, whichever is less. The foregoing does not in any way limit SynsorMed's rights and remedies in the event of Company nonpayment.

5.4. The Company will make all payments automatically via credit card or Automated Clearing House (ACH) payment from a designated bank account. Please complete credit card form below:

Credit Card Number: \_\_\_\_\_

Name on credit card: \_\_\_\_\_

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

CVC: \_\_\_\_\_

Billing Zip Code. \_\_\_\_\_

5.5. No amount paid or to be paid hereunder is intended to be, nor shall it be construed to be, an offer, inducement, or payment, whether directly or indirectly, overtly or covertly, for the referral of patients or services by either party to the other party or for recommending the purchase, lease, or order of any item or service.

5.6. If after a reasonable effort by the Company and SynsorMed the devices can not be retrieved from a patient the Company will be charged the full retail amount of the device

## 6. Term and Termination.

6.1. **Either party may terminate this Agreement at any time**, by providing the other party with thirty (30) days advance written notice of its intent to terminate.

6.2. Either party may terminate this Agreement if the other party breaches a material non-monetary provision of this Agreement and such party fails to cure the breach within seven (7) days after such party receives written notice of such breach.

6.3. Either party may terminate this Agreement immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or if any property of the other party is subjected to levy, seizure, general assignment for benefit of creditors, application or sale for or by any creditor or government agency.

6.4. SynsorMed may terminate this Agreement immediately upon written notice if the Company fails to pay the Compensation as specified herein and continues such non-payment for five (5) days after the due date.

6.5. Termination of this Agreement by either party shall not reduce the obligation of the Company to pay any accrued and unpaid amount hereunder, whether or not such amount has been invoiced prior to the date of termination.

6.6. The provisions of this Agreement which by their nature are intended to survive termination of this Agreement, including, without limitation, terms relating to the payment of fees and expenses, indemnification, warranty disclaimers, and limitations of liability, shall so survive.

## 7. Confidentiality.

7.1. The parties agree to maintain the privacy and security of any individually identifiable patient health information received from or created for the other party in accordance with all relevant state and federal laws and regulations, including, but not limited to, the privacy and security regulations issued pursuant to Subtitle F of the Health Insurance Portability and Accountability Act of 1996 set forth at 45 CFR parts 142, 160, 162 and 164 (collectively the "HIPAA Standards"). In connection with the forgoing, SynsorMed and the Company agree to enter into the Business Associate Agreement attached

hereto and incorporated herein as **Exhibit A**.

7.2. The Company understands and acknowledges that the Company will have access to “Confidential Information” concerning SynsorMed’s business and that the Company has a duty at all times to not use such information in competition with SynsorMed or to disclose such information or permit such information to be disclosed to any other person, firm, corporation, or third party during the term of this Agreement or any time thereafter, unless such disclosure is required by law or to carry out the Company’s responsibilities under this Agreement. For purposes of this Agreement, “Confidential Information” shall include, but is not limited to, the terms of the Agreement, any and all secrets or confidential technology, proprietary information, customer lists, trade secrets, records, notes, memoranda, data, ideas, processes, methods, techniques, systems, formulas, patents, models, devices, programs, computer software, writings, research, personnel information, customer information, plans, or any other information of whatever nature in the possession or control of SynsorMed that is not generally known or available to members of the general public or the medical profession, including any copies, worksheets, or extracts from any of the above.

## 8. Non-Solicitation.

8.1. During the Term of this Agreement, and for a period of two (2) years following the termination or expiration of this Agreement, regardless of the reason for such termination or expiration (the “Restricted Period”), a party shall not, directly or indirectly, solicit or otherwise communicate with any of the employees, independent contractors, patients, payors, or referral sources of the other party with the purpose of causing such persons to terminate their employment, contractual, professional, payment, or referral relationship with the other party, as the case may be, or with the purpose of causing such persons to establish an employment, contractual, medical, payment, or referral relationship with anyone other than the other party. In addition, the parties agree that during the Restricted Period, a party shall not, directly or indirectly, engage, employ, or otherwise hire any of the employees or independent contractors or former employees or independent contractors of the other party.

8.2. Each party understands and acknowledges that the other party shall suffer severe harm in the event that the foregoing non-solicitation covenant in this Section 9 is violated, and accordingly, if a party breaches any obligation of this Section 9, in addition to any other remedies available under this Agreement, at law or in equity, the other party shall be entitled to enforce this Agreement by injunctive relief and by specific performance of the Agreement, such relief to be without the necessity of posting a bond, cash or otherwise. Additionally, nothing in this Section 9.2 shall limit a party’s right to recover any other damages to which it is entitled as a result of the other party’s breach. If any provision of the non-solicitation covenant is held by a court of competent jurisdiction to be unenforceable due to an excessive time period or restricted activity, such covenant shall be reformed to comply with such time period or restricted activity that would be held enforceable.

## 9. Insurance.

9.1. Each party shall maintain commercially reasonable insurance, in amounts no less than that required by applicable law, in connection with this Agreement and the duties and obligations of each party under this Agreement.

## 10. Indemnification.

10.1. The Company shall indemnify and hold harmless SynsorMed and SynsorMed’s members, directors, officers, agents, and employees, from and against all claims, demands, liabilities,

losses, damages, costs, and expenses, including reasonable attorneys' fees, resulting in any manner, directly or indirectly, from the Company's performance, non-performance, or material breach of any provision of this Agreement, or from the actual or alleged negligence or willful acts or omissions of the Company or its members, directors, officers, employees, agents, or independent contractors. By way of inclusion and not limitation, this indemnity shall apply to claims, fines, penalties, actions, proceedings, or orders of state or federal agencies.

10.2. If the Company receives notice or acquires knowledge of any matter which may result in a claim for indemnification under this Agreement, the Company shall promptly notify SynsorMed.

#### 11. Limitation of Liability.

11.1. SYNSORMED SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF SYNSORMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

#### 12. Governing Law, Venue, Arbitration.

12.1. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Except for enforcement of Sections 8 and 9 of this Agreement, which may be enforced in a court having competent jurisdiction in Hillsborough County, Florida, any other dispute arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in Hillsborough County, Florida by a single arbitrator who is knowledgeable about issues related to the subject matter of this Agreement and deemed mutually acceptable by the parties. The arbitration shall be administered by the American Arbitration Association ("AAA"). Notwithstanding any provisions of the AAA arbitration rules to the contrary, the arbitration shall be conducted pursuant to the following: The arbitrator(s) shall not have the authority to modify any provisions of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraint orders in connection with the arbitration. The decision rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered in conformity with the decision in any court having jurisdiction. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement. In no event will this arbitration clause be interpreted to allow a class action in arbitration.

12.2. The cost of the arbitration, including the fees of the arbitrator shall be borne equally by the parties. Except as otherwise provided by applicable law, in the event either party hereto retains the services of any attorney for any action based upon or relating to the Agreement, each party shall pay its own attorneys' fees, costs, and expenses (incurred at arbitration, trial, and/or appellate levels).

#### 13. Miscellaneous.

13.1. Relationship of Parties. The relationship of SynsorMed, on the one hand, and the Company, on the other, established by this Agreement is solely that of an independent contractor, and the provisions hereof are not intended to create any partnership, joint venture, agency, or employment relationship between the parties.

13.2. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the

same or another provision hereof.

13.3. Additional Assurances. Except as may be herein specifically provided to the contrary, the provisions of this Agreement shall be self-operative and shall not require further agreement by the parties; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as are reasonable and as the requesting party may deem necessary to effectuate this Agreement.

13.4. Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either party's employees, or any other similar cause beyond the reasonable control of either party unless such delay or failure in performance is expressly addressed elsewhere in this Agreement. Notwithstanding the same, the parties hereto agree to continue this Agreement to the best degree they can so long as reasonably possible.

13.5. Notices. Each notice, request, or demand given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, First Class, postage pre-paid, and addressed to the address of the intended recipient set forth below, or to such other address as may be specified in this Agreement or in writing by the parties

13.6. Entire Agreement. This Agreement represents the entire agreement between the parties and shall not be modified unless done so in writing signed by or on behalf of both parties. Except as otherwise provided herein, this Agreement supersedes any prior written or oral agreements between the parties.

13.7. Amendment. This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.

13.8. Assignment. This Agreement shall be binding upon and inure to the benefit on the heirs, legatees, successors, and assigns of each of the parties. The parties shall not sell, transfer, assign, sublicense, or subcontract any right or obligation hereunder without the prior written consent of the other party.

13.9. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

13.10. No Third Party Beneficiaries. Except as otherwise provided herein, this Agreement shall not confer any rights or remedies upon any person other than SynsorMed and the Company and their respective successors and permitted assigns.

13.11. No Warranty. The Company acknowledges that SynsorMed has not made and will not make any express or implied warranties or representations that the Services provided by SynsorMed will result in any particular amount or level of medical Company or income to the Company. Specifically, SynsorMed has not represented that its Services will result in higher revenues, lower

expenses, greater profits, or growth in the number of patients treated by the Company.

13.12. Subcontracting. SynsorMed may subcontract or delegate the performance of portions of the Services to third parties in SynsorMed’s discretion, provided that SynsorMed shall remain responsible to the Company for the performance of the Services.

13.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, and said counterparts shall constitute but one and the same agreement which may be sufficiently evidenced by one counterpart. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart. In the event of delivery by facsimile or electronic mail, the parties hereto shall use all reasonable efforts also to deliver manually signed counterparts as soon thereafter as is practicable.

IN WITNESS THEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

**SYNSORMED, INC**

**COMPANY**

\_\_\_\_\_  
Theodore Harvey, VP Sales

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Superior Care Service**

\_\_\_\_\_  
Jay Arora CEO Licensee

\_\_\_\_\_  
Date



## Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made and entered on \_\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_ ("Covered Entity") and SynsorMed, ("Business Associate").

### WITNESSETH:

WHEREAS, Business Associate provides certain services on behalf of Covered Entity that require Covered Entity to disclose certain identifiable health information to Business Associate, pursuant to the terms of a services agreement or other contract between the parties (the "Services Agreement");

WHEREAS, the parties desire to enter into this Agreement to permit Business Associate to use or disclose such identifiable health information and to comply with the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the privacy and security regulations promulgated thereunder, as currently in effect or as hereafter amended (the "HIPAA Privacy and Security Rules");

WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the "HIPAA Privacy and Security Rules" shall include all amendments thereto set forth in the HITECH Act and the regulations promulgated thereunder, as currently in effect or as hereafter amended); and

WHEREAS, on January 25, 2013, the United States Department of Health and Human Services published its final omnibus rule modifying the HIPAA Privacy and Security Rules, as set forth in 78 Fed. Reg. 5566 (the "HIPAA/HITECH Omnibus Rule").

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **1. DEFINITIONS**

1.1 Breach. "Breach" shall have the same meaning as the term "Breach" set forth in 74 Fed. Reg. 42767-68 (Aug. 24, 2009), until codified at 45 C.F.R. § 164.402, upon which "Breach" shall have the meaning as codified at 45 C.F.R. § 164.402 upon the Compliance Date (as defined below).

1.2 Compliance Date. "Compliance Date" shall mean September 23, 2013 with respect to such provision of the HIPAA/HITECH Omnibus Rule, or such other compliance date as determined by the Secretary.

1.3 Electronic Protected Health Information. “Electronic Protected Health Information” shall mean Protected Health Information transmitted by or maintained in “electronic media” (as such term is defined in 45 C.F.R. § 160.103).

1.4 Protected Health Information. “Protected Health Information” (“PHI”) shall have the same meaning as the term “Protected Health Information” set forth at 45 C.F.R. § 160.103, limited to the information received from, or created or received by Business Associate on behalf of, Covered Entity.

1.5 Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

1.6 Unsecured Protected Health Information. “Unsecured Protected Health Information” shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published at 74 Fed. Reg. 19006 (April 27, 2009), and in annual guidance published thereafter.

All other capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning for those terms as set forth in the HIPAA Privacy and Security Rules. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

## **2. OBLIGATIONS OF BUSINESS ASSOCIATE**

2.1 Not to Use or Disclose PHI Unless Permitted or Required. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law, or as otherwise authorized by Covered Entity.

2.2 Use Safeguards. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement.

2.3 Mitigate Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement.

2.4 Report Unpermitted Disclosures of PHI. Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not permitted or required by this Agreement of which Business Associate becomes aware.

2.5 Compliance of Subcontractors. In accordance with 45 C.F.R. § 164.502(e)(1)(ii), Business Associate agrees to ensure that any subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate, agree to the same

restrictions, conditions and requirements that apply to Business Associate with respect to such information.

2.6 Requests for Restrictions. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding 45 C.F.R. § 164.522(a)(1)(ii), Business Associate agrees to comply with an individual's request to restrict disclosures of Protected Health Information, of which Business Associate has been notified by Covered Entity, to a health plan for purposes of carrying out "payment" or "health care operations" (as such terms are defined in 45 C.F.R. § 164.501) if the Protected Health Information pertains solely to a health care item or service for which Covered Entity has been paid in full by the individual or the individual's representative.

2.7 Provide Access. Business Associate will make available to Covered Entity Protected Health Information to the extent requested by Covered Entity as required under 45 C.F.R. § 164.524 and Section 13405(e) of the HITECH Act, which describe the requirements applicable to an individual's request for access to Protected Health Information relating to the individual. The obligations of Business Associate in this Section apply only to Protected Health Information in a "Designated Record Set" in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

2.8 Incorporate Amendments. Business Associate will make available to Covered Entity Protected Health Information requested by Covered Entity as required for amendment of such Protected Health Information, and shall make and incorporate any such amendments, all in accordance with 45 C.F.R. § 164.526, which describes the requirements applicable to an individual's request for an amendment to any Protected Health Information relating to the individual. The obligations of Business Associate in this Section apply only to Protected Health Information in a "Designated Record Set" in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

2.9 Document Disclosures. Business Associate will make available Protected Health Information requested by Covered Entity as required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and Section 13405(c) of the HITECH Act, which describe the requirements applicable to an individual's request for an accounting of disclosures of Protected Health Information relating to the individual. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and Section 13405(c) of the HITECH Act.

2.10 Covered Entity Obligations. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s) as of the Compliance Date.

2.11 Disclose Companies, Books, and Records. If Business Associate receives a request, made on behalf of the Secretary, that Business Associate make its internal Companies, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules, then Business Associate will promptly comply with the request within the time period required for such response as specified in such request.

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

3.1 Functions and Activities on Behalf of Covered Entity. Business Associate may use or disclose Protected Health Information for the purpose of meeting its obligations as set forth in this Agreement or as required by the Services Agreement.

3.2 Other Uses and Disclosures. Except as otherwise limited by this Agreement, Business Associate may use and disclose Protected Health Information as follows:

- a. if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
  - i. the disclosure is required by law; or
  - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- b. for data aggregation services, if to be provided by Business Associate for the health care operations (as such terms are defined in 45 C.F.R. § 164.501) of Covered Entity pursuant to any agreements between the parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

3.3 Minimum Necessary. Business Associate shall use, disclose, or request only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of such use, disclosure, or request.

### **4. SECURITY RULE SAFEGUARDS**

4.1 Implement Safeguards. Business Associate shall implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity; in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements set forth in Sections 164.308, 164.310, and 164.312; and, as of the Compliance Date, comply with Subpart C of 45 C.F.R. Part 164, where applicable, with respect to Electronic Protected Health Information.

4.2 Compliance of Subcontractors. In accordance with 45 C.F.R. § 164.308(b)(2), Business Associate agrees to ensure that any subcontractors that create, receive, maintain or transmit Electronic Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information.

4.3 Report Security Incidents. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, “Security Incident” means the successful unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or interference with system operations in an information system, excluding: (a) “pings” on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (*e.g.*, a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information. Business Associate agrees to mitigate, to the extent practicable, any harmful effect resulting from such Security Incident.

## **5. BREACH NOTIFICATION**

5.1 Timing of Notification. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay, but in no event later than forty-five (45) calendar days following the discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

5.2 Law Enforcement Delay. Notwithstanding the provisions of Section 5.1, above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

- a. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
- b. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay such notification for no longer than thirty (30) days from the date of

the oral statement unless the official submits a written statement during that time.

5.3 Contents of Notification. The Breach notification provided to Covered Entity shall include, to the extent possible:

- a. the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
- b. a brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
- c. a description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- d. any steps individuals should take to protect themselves from potential harm resulting from the Breach;
- e. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breach; and
- f. contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

Business Associate shall provide the information specified in this Section to Covered Entity at the time of the Breach notification, if possible, or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in this Section, and shall provide such information to Covered Entity even if the information becomes available after the forty-five (45) day period provided in Section 5.1, above.

## **6. OBLIGATIONS OF COVERED ENTITY**

6.1 Limitations in Notice of Privacy Companys. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy Companys of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

6.2 Changes in 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 Protected

Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

6.3 Restriction on Use of Protected Health Information. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information 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 may affect Business Associate's use or disclosure of Protected Health Information.

## **7. TERM AND TERMINATION**

7.1 Term. The Term of this Agreement shall commence as of the Effective Date of this Agreement. This Agreement shall terminate upon termination of the Services Agreement or on the date Covered Entity terminates for cause as authorized in Section 7.2, whichever is sooner.

7.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach or violation hereof by Business Associate, Covered Entity shall provide written notice to Business Associate of the breach or violation, and Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within thirty (30) days of receiving notice of the breach or violation and Covered Entity has taken reasonable steps to cure such breach or end such violation during such thirty (30) day period, and such steps are unsuccessful, Covered Entity may terminate this Agreement. If Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate this Agreement.

7.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate will return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form, and shall retain no copies of such information. If such return or destruction is not feasible, as reasonably supported by competent records and other written evidence of Business Associate, Business Associate will extend the protections of this Agreement to the information retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

## **8. MISCELLANEOUS PROVISIONS**

8.1 Amendment. This Agreement cannot be amended except by the mutual written agreement of Business Associate and Covered Entity. In the event either party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules, such party shall so notify the other party in writing. For a period of up to thirty (30) days, the parties shall address in good faith such concern and shall amend the terms of this Agreement, if necessary, to bring it into compliance. If after such thirty (30) day period this Agreement fails to comply with the HIPAA Privacy and Security Rules with respect to the concern(s) raised pursuant to this Section, then either party may terminate this Agreement upon written notice to the other party.

8.2 No Third Party Beneficiary Rights. This Agreement is intended for the sole benefit of Business Associate and Covered Entity and does not create any third-party beneficiary rights.

8.3 Independent Contractor Relationship. The parties agree that the legal relationship between Covered Entity and Business Associate is strictly an independent contractor relationship. Nothing in this Agreement shall be deemed to create a joint venture, agency, partnership, or employer-employee relationship between the parties.

8.4 Headings. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.

8.5 Survival. The rights and obligations of Business Associate under Section 7.3 of this Agreement shall survive the termination of this Agreement.

8.6 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Privacy and Security Rules.

8.7 Waiver. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.

8.8 Binding Effect. The Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

8.9 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

8.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

*[Signature Page to Follow]*



*[Signature Page to Business Associate Agreement]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement which is effective as of the date first above written.

1. COVERED ENTITY:

\_\_\_\_\_

By:

\_\_\_\_\_

Print:

\_\_\_\_\_

Title:

\_\_\_\_\_

2. BUSINESS ASSOCIATE:

Superior Care Services

\_\_\_\_\_

By:

\_\_\_\_\_

Print:

Jay Arora

\_\_\_\_\_

Title:

CEO

\_\_\_\_\_