

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is by and between our customer ("Covered Entity") and O & P Digital Technologies LLC dba OPIE Software, Futura and/or Quality Outcomes LLC ("Business Associate"), with its principal place of business in Gainesville, Florida and is effective as of the date executed by our customer at the bottom of this agreement ("Effective Date").

WHEREAS our customer is a Covered Entity as defined in the regulation promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and

WHEREAS Business Associate will provide certain services to Covered Entity which may cause Business Associate to be deemed a Business Associate as defined in the regulation promulgated by the Department of Health and Human Services pursuant to HIPAA; and

WHEREAS, the Parties are subject to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Standards") and the Security Standards for the Protection of Electronic Protected Health Information ("Security Standards") (collectively, "HIPAA"), the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") and in consideration of the Final Rule Modifications to HIPAA, HITECH and GINA (the "Omnibus Rule").

WHEREAS Covered Entity may disclose or make available to Business Associate and Business Associate may use, disclose, receive, transmit, maintain or create from or on behalf of Covered Entity, information in order to provide the services or perform the function for which Covered Entity has retained Business Associate; and

WHEREAS the purpose of this Agreement is to satisfy the obligations of Covered Entity under HIPAA and the HITECH Act and to ensure the integrity and confidentiality of certain information that Business Associate uses, discloses, receives, transmits, maintains or creates on behalf of Covered Entity now and in the future,

NOW, THEREFORE, in consideration of the mutual promises in this Agreement, the Parties' obligations under this Agreement, compliance with HIPAA, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

- 1. Definitions.** Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the Privacy Rule and the Security Rule.
  - 1.1 Business Associate.** "Business Associate" shall mean a person or entity that performs certain functions or activities that involve the use or disclosure of PHI on behalf of, or provides services to, a Covered Entity as defined in 45 CFR § 164.502 (e).
  - 1.2 Covered Entity.** "Covered Entity" shall have the meaning given such terms in 45 CFR §160.103 to include a: (1) health plan; (2) healthcare clearinghouse; or (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by the subsection.
  - 1.3 Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
  - 1.4 Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  - 1.5 Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
  - 1.6 Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
  - 1.7 Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
  - 1.8 Security Rule.** "Security Rule" shall mean the Standards for Security of Electronic PHI at 45 C.F.R. parts §160 and §164, subparts A and C.

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### 2. Scope and Interpretation

- 2.1 The terms and conditions of this Agreement shall supplement and amend all present and future Agreements and relationships between the Parties, whether written, oral or implied (“Base Agreement” or collectively, “Base Agreements”), which provide for Business Associate’s receipt, transmission, maintenance, creation, use and disclosure of PHI, in any form or medium, including electronic PHI in Business Associate’s capacity as a Business Associate to Covered Entity. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the Privacy and Security Rules. In the event of any inconsistency or conflict between Base Agreement (s) and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. Except as supplemented and/or amended, the terms of the Base Agreement (s) shall continue unchanged and shall apply with full force and effect to govern the matters addressed in the Base Agreement (s).
- 2.2 The Parties intend for this Agreement to be interpreted consistently with their intent to comply with HIPAA, the HITECH Act, and other federal, state, and local law. This Agreement applies to and supplements, amends, and is made a part of any other License, Contract or Agreement. In the event an inconsistency exists between this Agreement and any other License, Contract or Agreement, the provisions of this Agreement will control. Any ambiguity in this Agreement or in determining controlling provisions shall be resolved in favor of an interpretation that permits the Parties to comply with HIPAA, the HITECH Act, and other federal, state, and local laws and that provides the greatest privacy and security protections for Protected Health Information. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA and/or the HITECH Act, HIPAA and/or the HITECH Act, respectively, shall control. Where provisions of this Agreement are different than those under HIPAA and/or the HITECH Act but are nonetheless permitted by HIPAA and/or the HITECH Act, the provisions of this Agreement shall control.
- 2.3 The Protected Health Information is, and shall remain, the property of Covered Entity.

### 3. Obligations and Activities of Business Associate.

Business Associate agrees to:

- 3.1 Not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 3.2 Comply with all federal, state, and local confidentiality, privacy, and security laws, specifically including, but not limited to, HIPAA and the HITECH Act as modified by the Omnibus Rule. Without limiting the generality of the foregoing, subject to the HITECH Act, Business Associate shall comply with 45 C.F.R. § § 164.308, 164.310, 164.312 and 164.316 of the Security Standards. Further, Business Associate shall not act or fail to act in a manner that would cause, directly or indirectly, Covered Entity to not be in compliance with applicable federal, state, or local law.
- 3.3 Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity, as provided for in the Security Rule.
- 3.4 Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate whether or not in violation of the requirements of this Agreement.
- 3.5 Report to Covered Entity any unauthorized use or disclosure of the PHI by Business Associate or its agents, workforce, or subcontractors within five (5) business days of discovery and the remedial action taken or proposed to be taken with respect to such use or disclosure and account for such disclosure. Business Associate is responsible for any and all costs related to notification of individuals or next of kin (if the Individual is deceased) of any security or privacy breach for which the primary underlying cause can be attributed to the Business Associate or its agents, workforce, or subcontractors.
- 3.6 In the event of a breach of PHI, Business Associate understands that Business Associate is required by law to provide Covered Entity a report including individual name, contact information, nature/cause of breach, PHI breached, and the date or period of time during which the breach occurred. Business Associate understands that such a report must be provided to Covered Entity within five (5) business days from the date of the discovery of the breach or the date the breach should have been known to have occurred.
- 3.7 Ensure that any agent, including a subcontractor, to whom it provides PHI received from, transmitted, maintained, or created or received by Business Associate on behalf of, Covered Entity, agrees in writing to the at

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least the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- 3.8 Provide access, at the request of Covered Entity and during normal business hours, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Covered Entity delivers to Business Associate a written notice at least five (5) business days in advance of requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no PHI in a Designated Record Set of Covered Entity.
- 3.9 Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees, subcontractors and agents have no PHI from a Designated Record Set of Covered Entity.
- 3.10 Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of PHI received from, transmitted, maintained, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity or to the Secretary for purposes of the Secretary determining either Party's compliance with the Privacy Rule or Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.
- 3.11 Maintain necessary and sufficient documentation of disclosures of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of such disclosures, in accordance with 45 CFR §164.528.
- 3.12 On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than five (5) business days after Business Associate's receipt of such request.
- 3.13 Except as provided for in this Agreement, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will immediately notify the Covered Entity and redirect the Individual to the Covered Entity.

#### **4. Permitted Uses and Disclosures by Business Associate.**

- 4.1 Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of PHI necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or 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.
- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity and/Business Associate as permitted by 45 CFR §164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

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### 5. Obligations of Covered Entity.

Covered Entity agrees to:

- 5.1 Notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 5.2 Comply with all federal, state, and local confidentiality, privacy, and security laws, specifically including, but not limited to, HIPAA and the HITECH Act as modified by the Omnibus Rule. Without limiting the generality of the foregoing, subject to the HITECH Act, Covered Entity shall comply with 45 C.F.R. § § 164.308, 164.310, 164.312 and 164.316 of the Security Standards. Further, Covered Entity shall not act or fail to act in a manner that would cause, directly or indirectly, Business Associate to not be in compliance with applicable federal, state, or local law.
- 5.3 Notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 5.4 Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

### 6. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and/or Security Rules if done by Covered Entity.

### 7. Term and Termination.

- 7.1 Term. The Term of this Agreement shall be effective as of Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.
- 7.2 Termination for Cause. Notwithstanding any provision of this Agreement or the Base Agreement to the contrary, upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- 7.3 Termination or Amendment as a Result of Government Regulation. The Parties acknowledge that legal requirements with respect to the subject matter of this Agreement are likely to change. Accordingly, Covered Entity or Business Associate may terminate or unilaterally amend this Agreement without liability, to comply with any order issued or proposed to be issued by a federal or state department, agency, or court, or to comply with any provision of law or reimbursement that would: (i) invalidate or be inconsistent with this Agreement; (ii) cause a Party to violate the law; or (iii) jeopardize either Party's licensure or participation in a federal health care benefit program. If either Party amends this Agreement as provided in this Section, and the amendment is unacceptable to the other Party, the other Party may, within 10 days, terminate the Agreement upon notice. Failure to provide such notice of termination within the time specified constitutes acceptance of the amendment.
- 7.4 Effect of Expiration or Termination.
  - 7.4.1 Except as provided in paragraph (2) of this section, upon expiration or termination of this Agreement for any reason (including but not limited to, termination for cause, pursuant to Section (b) herein), Business Associate shall return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - 7.4.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to

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such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. The provisions of this Section 7 (c) shall survive the expiration or termination of the Base Agreement (s) or this Agreement for any reason.

**8. Miscellaneous.**

- 8.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 8.2 Amendment/Waiver. Notwithstanding any provision of this Agreement or the Base Agreement (s), as applicable, the Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule or Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended from time to time and any privacy, security or other administrative simplification regulations promulgated pursuant thereto. No amendment shall be effective unless in writing and signed by duly authorized representatives of both Parties. No waiver by either Party of any breach of this Agreement, no matter how long continuing nor how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor is delay or omission on the part of either Party to exercise or insist on any right, power or privilege hereunder a waiver of such right, power or privilege.
- 8.3 Survival. The respective rights and obligations of Business Associate under Section 7 (c) of this Agreement shall survive the termination of this Agreement.
- 8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with HIPAA, the HITECH Act and the Omnibus Rule.
- 8.5 Severability. If a court of competent jurisdiction finds any term of this Agreement invalid, illegal or unenforceable, that terms shall be curtailed, limited or deleted, but only to the extent necessary to remove the invalidity, illegality or unenforceability, and without in any way affecting or impairing the remaining terms.
- 8.6 Governing Law. This Agreement will be governed by the laws of the State of Florida, without reference to the State’s choice of law rules. Jurisdiction and venue for any dispute arising out of or in connection with this Agreement shall be in Alachua County, Florida.

**9. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement. Facsimile or digitally scanned signatures shall be accepted and enforceable in lieu of original signatures.

This Agreement becomes binding when signed by duly authorized representatives of both Parties.

**Covered Entity:** \_\_\_\_\_

**Business Associate:** O & P Digital Technologies LLC dba OPIE Software, Futura, and/or Quality Outcomes LLC

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

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

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

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

Title: \_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_  
(Authorized Representative)

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

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