

**PODIATRY RESIDENCY RESOURCE, INC. ("PRR")**  
**END USER SOFTWARE LICENSE AGREEMENT**

Your use of the Podiatry Residency Resource Software is subject to these terms and you accept them by accessing the software or by clicking "Accept."

If you do not agree to be bound by these terms, or if these terms are not enforceable where you are located, you may not use the Software Application. We would not provide the Software Application without the conditions in these terms. If you later seek to repudiate these terms or any aspect of them, you agree that such action would constitute a breach of these terms, prohibiting you from enforcing any aspect of the terms and entitling us to damages resulting from your breach.

**License to Use the PRR Software Application ("Software Application")**

- A. PRR grants you a revocable, non-exclusive, non-sublicensable, license to use the Software Application consistent with its intended purpose reflected in the Software Application's documentation. You have no further rights to the Software Application.
- B. PRR reserves the right, without advance notice or liability, to modify, revise, change, alter, remove, replace, or discontinue the Software Application at its sole discretion.
- C. In consideration of the license granted, your residency program shall pay an annual fee, the amount of which is established by PRR. Payment of the annual fee is due by July 31 each year. If payment is not received from your residency program by August 31 of any year, PRR may in its sole discretion disable your access to the Software Application until the annual license fee and late fee are paid in full.

**Proprietary Rights**

- A. All title, copyrights, and trade secret rights in and to the Software Application (including, without limitation, any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Application), any copies of the Software Application, and all derivative works, data, reports, and other information generated or stored by the Software Application remain owned by PRR.
- B. Should you transmit to PRR or its representatives, by any means, any materials or other information (including, without limitation, ideas, concepts or techniques for new or improved services and products), whether as information, feedback, data, questions, comments, suggestions or the like, you hereby assign all right and title to PRR and, if you do not possess the right to make such an assignment, you hereby grant PRR a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, to use, copy, transmit, distribute, create derivative works of, display, and perform the same.

**Terms of Use**

- A. You may use the Software Application only in accordance with these terms, all applicable documentation and any other published guidelines, rules, or policies provided by PRR in whatever form.
- B. The password you have been given for use in accessing the Software Application and any future or other password or code, key, or similar access mechanism issued to you shall be used only by you and shall not be shared or otherwise disclosed to anyone else. It is your responsibility to maintain the confidentiality of your password and you shall immediately notify PRR in the event you become aware of or suspect any unauthorized use of your password.
- C. The Software Application and any and all data stored or generated by the Software Application are proprietary and confidential information of PRR and you may not disclose, distribute, transfer, or provide access to same to anyone without the express written consent of PRR as appropriate.
- D. You may not reverse engineer, decompile, or disassemble the Software Application, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
- E. PRR may provide you with support services related to the Software Application ("Support Services").
- F. You are solely responsible for obtaining and maintaining, at your own expense, all computer hardware, software, communication equipment, access lines and such other equipment necessary to access and utilize the Software Application.

G. By accepting the Agreement, you authorize the release of information you transmit to PRR using the Software Application (including but not limited to case files and related information and images) to the American Board of Foot and Ankle Surgery, the American Board of Podiatric Medicine, the Council on Podiatric Medical Education, or any organization to which you are applying for privileges, seeking employment, or seeking inclusion as a participating provider in a health insurance network, if that entity needs the information to carry out the activities you request. Notwithstanding any other term in this Agreement, PRR does not obtain any title to any case file and related information and images that you transmit to PRR using the Software Application.

H. By accepting the Agreement, you authorize PRR to release your American Board of Foot and Ankle Surgery and American Board of Podiatric Medicine in-training examination results to each residency program in which you participate.

I. You may not transfer or distribute the Software Application to others.

#### **HIPAA Compliance**

PRR will treat you as if you are a "Covered Entity" as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Electronic Transaction, Security and Privacy Standards (the "Standards") which are set forth in 45 C.F.R. Parts 142, 160, 162 and 164, and that the case files and related information and images that you upload may constitute protected health information (PHI). PRR agrees that it is bound by the obligations of a Business Associate as set forth in the HIPAA Business Associate Agreement attached hereto as Exhibit A and incorporated herein by reference.

#### **Governing Law**

This Agreement will be enforced and construed in accordance with the laws of the State of California, without regard to conflict of laws principles.

#### **Limited Warranty**

**A. THE SOFTWARE APPLICATION, THE ACCOMPANYING FILES AND THE PRR WEBSITE ARE PROVIDED "AS IS" AND PROVIDES NO REPRESENTATION OR WARRANTY THAT THE SOFTWARE, THE ACCOMPANYING FILES, OR THE WEBSITE THROUGH WHICH THE SOFTWARE APPLICATION IS ACCESSED AND USED WILL BE UNINTERRUPTED OR ERROR-FREE. PRR AND ITS SUPPLIERS DO NOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE APPLICATION, WEBSITE OR RELATED FILES. PRR AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO TITLE OR INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED PRODUCT IS WITH YOU.**

**B. ANY LIABILITY OF PRR UNDER THIS AGREEMENT IS LIMITED EXCLUSIVELY TO REFUND OF THE ANNUAL LICENSE FEE PRR RECEIVED FROM YOUR RESIDENCY PROGRAM FOR THE RIGHTS GRANTED HEREUNDER. THE TOTAL LIABILITY, IF ANY, OF PRR, INCLUDING BUT NOT LIMITED TO LIABILITY ARISING OUT OF CONTRACT, TORT, BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES OR OTHERWISE, SHALL NOT IN ANY EVENT EXCEED THE FEES PAID BY YOUR RESIDENCY PROGRAM DURING A 12 MONTH PERIOD. IN NO EVENT ARE PRR, THE AMERICAN BOARD OF FOOT AND ANKLE SURGERY, THE AMERICAN BOARD OF PODIATRIC MEDICINE, OR PRR'S SUPPLIERS LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOST SAVINGS, EVEN IF A THEIR REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY, ARISING IN ANY WAY RELATED TO THIS AGREEMENT, PRR, OR THE SOFTWARE APPLICATION.**

**C. YOU AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND PRR, AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.**

#### **Term and Termination**

This Agreement is effective as of the date the end user accesses the Software Application or clicks "Accept" (PRR accepts the terms of this Agreement by supplying the Agreement to the end user). Subject to payment of the annual license fee, this Agreement continues in effect on a year-to-year basis until terminated as provided herein. PRR may terminate this Agreement immediately by written notice if you breach the terms of this Agreement. Either party may terminate this Agreement as of the end of the current annual term by written notice.

### **Arbitration**

The exclusive jurisdiction for disputes arising under or related to this Agreement, of any type or nature not resolved informally, is confidential binding arbitration, to be held in San Francisco, California, and to be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, before a single arbitrator, on an individual basis (claims by multiple end users may not be aggregated into one arbitration). The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

### **General**

- A. The failure by any party at any time to enforce any of the provisions of this Agreement or any right or remedy hereunder or at law or in equity, or to exercise any option herein provided, does not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either party may not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
- B. Every provision of this Agreement shall be construed, to the fullest extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.
- C. PRR may assign, delegate and otherwise transfer this Agreement or PRR's rights and obligations to any entity. You may not assign, delegate or otherwise transfer this Agreement or any of your rights or obligations under this Agreement without the prior written consent of PRR. This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.
- D. The terms of the Proprietary Rights, Governing Law, Limited Warranty, Arbitration, and General sections of this Agreement survive termination.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS.

## EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT

**THIS AGREEMENT** is an Exhibit to the Podiatry Residency Resource End User License Agreement (the "Underlying Agreement") and constitutes a direct contract between PRR (hereafter referred to as "PRR" and "Business Associate") located at 445 Fillmore Street, San Francisco, California 94117, and any Podiatric Resident enrolled in PRR (hereafter referred to as "Podiatric Resident" and "Covered Entity") (collectively the "Parties").

**WHEREAS**, Covered Entity and Business Associate are Parties to the relationship by which PRR provides residency case log submission and related services for Podiatric Residents entering the certification pathways of the American Board of Foot and Ankle Surgery and/or the American Board of Podiatric Medicine, and in connection with the provision of those services, the Podiatric Resident may disclose to PRR certain protected health information, as defined below. Pursuant to the Underlying Agreement, PRR, as a "Business Associate," provides certain services to the Podiatric Resident, as a "Covered Entity," as such terms are defined in 45 CFR 160.103; and, in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity and for other legal purposes certain individually identifiable protected health information relating to patients of Covered Entity ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act") and regulations promulgated thereunder, as such law and regulations may be amended from time to time (collectively, "HIPAA"); and

**WHEREAS**, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a covered entity and its business associates.

**NOW, THEREFORE**, the Parties agree that the Underlying Agreement shall hereby be amended as follows:

### 1. Definitions.

a. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

b. "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.

c. "Security Rule" shall mean the administrative, physical, and technical standards established at 45 CFR Parts 160 and 164, Subparts A and C.

d. "Protected Health Information" (also referred to as "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.

e. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.

f. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

g. "Breach" shall have the same meaning as "breach" in 45 CFR 164.402.

h. "Unsecured Protected Health Information" shall have the same meaning as "unsecured protected health information" in 45 CFR 164.402.

i. "Designated Record Set" shall mean medical, case or medical management billing, enrollment, payment or claims adjudication information used in whole or part by, or for, the covered entity to make decisions about individuals in accordance with 45 CFR 164.501.

Any other terms used in this Agreement, but not defined herein, shall have the same meaning as those terms as defined in HIPAA.

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

- a. Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement, the Underlying Agreement, or as Required By Law.
- b. To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 Part 164, the Business Associate will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.
- c. Business Associate agrees to use appropriate safeguards, including without limitation administrative, physical, and technical safeguards, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it may receive, maintain, or transmit on behalf of the Covered Entity. Sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), and 164.316 (Policies and Procedures and Documentation Requirements) of Title 45, Code of Federal Regulations, apply to Business Associate in the same manner that such sections apply to Covered Entity. Business Associate shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary specifying the technologies and methodologies that render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under the HITECH Act.
- d. 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 the requirements of this Agreement.
- e. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement, including Breaches of unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. The Business Associate shall report any such use or disclosure promptly, and in any event, no later than 60 days from the discovery of the Breach or Security Incident.
- f. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- g. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information 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.
- h. Business Associate agrees to make any amendments(s) to Protected Health Information 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, and in the time and manner designated by Covered Entity.
- i. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy & Security Rules.
- j. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity, or at the Covered Entity's request, to the individual, as necessary to satisfy the Covered Entity's obligation under 45 CFR 164.528

### 3. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may only use or disclose Protected Health Information as necessary to perform the services described in the Underlying Agreement and this Agreement.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected

Health Information to a third party to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in HIPAA and the Underlying Agreement, provided that such disclosure would not violate the Privacy & Security Rules if done by Covered Entity, and provided Business Associate and third party have executed a subcontractor agreement as required by Section 2(f) of this Agreement.

c. Business Associate may use or disclose Protected Health Information as required by law.

d. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with the minimum necessary standards set forth in 45 CFR 164.502(b).

e. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart B of 45 CFR Part 164, except for the following specific uses and disclosures:

1. Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Business Associate may disclose Protected Health Information 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.
3. Business Associate may use Protected Health Information to provide Data Aggregation services related to the health care operations of the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
4. Business Associate may aggregate and de-identify any and all PHI obtained by the Business Associate under this Agreement and use all such de-identified data in accordance with the de-identification requirements at 45 CFR 164.514(b). With respect to de-identification, the aggregated and de-identified data produced by the Business Associate either: (i) will not include any identifiers listed in 45 CFR 164.514(b)(2)(i), or (ii) will have been determined by a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable and applying such principles and methods, that the risk is very small that the aggregated and de-identified data generated by the Business Associate under this Agreement could be used, alone or in combination with other reasonably available information, by an anticipated recipient, to identify an individual who is a subject of the information, thereby forming a "statistically de-identified data set" and rendering the information not PHI under HIPAA. De-identified information does not constitute PHI and is not subject to the terms of this Agreement.

#### 4. Obligations of the Covered Entity.

a. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

5. Permissible Requests by the Covered Entity. Except as set forth in Section 3(e) of this Agreement, Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy & Security Rules if done by Covered Entity.

6. Term and Termination.

a. Term. The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall terminate upon termination of the Underlying Agreement or on the date the Covered Entity terminates for cause as authorized in Section 6(b), whichever is sooner.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either: (1) provide Business Associate with an opportunity to cure the breach within a time period specified by the Covered Entity or end the violation and then terminate the Underlying Agreement if Business Associate does not cure the breach within the time period specified by the Covered Entity; (2) immediately terminate this Agreement and the Underlying Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or (3) if the Business Associate has breached a material term of this Agreement and neither a cure nor termination are feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

(1) Except as provided in paragraphs (2) and (3) of this section, upon termination of this Agreement or the Underlying Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(3) To the extent Business Associate determines that Protected Health Information received from the Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity is necessary for the Business Associate to continue its proper management and administration, or to carry out Business Associate's legal responsibilities, Business Associate will retain only that Protected Health Information which is necessary for such purposes.

- i. Business Associate will return to Covered Entity, or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that Business Associate maintains in any form.
- ii. Business Associate will not use or disclose the Protected Health Information retained by the Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Sections 3(e)(i) and (ii), which applied prior to termination.
- iii. Business Associate will return to Covered Entity, or, if agreed to by Covered Entity, destroy the Protected Health Information retained by the Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

d. Survival. The obligations of the Business Associate under this Section shall survive the

termination of this Agreement.

7. Miscellaneous.

a. Regulatory References. A reference in this Agreement to a section in the Privacy & Security Rules means the section as in effect or as amended, and for which compliance is required.

b. Agreement. This Agreement, including this subsection, and the Underlying Agreement, may be amended, changed or modified only in a written agreement signed by duly authorized representatives of each party. No full or partial waiver or discharge in regard to this Agreement or the Underlying Agreement or any term or condition of this Agreement or the Underlying Agreement shall be valid or binding unless embodied in a written document signed by an authorized representative of the party against which such waiver or change is sought to be enforced.

c. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as necessary for compliance with the requirements of HIPAA and any other applicable law.

d. Survival. The respective rights and obligations of Business Associate under Sections 3(e)(i) and (ii) of this Agreement shall survive the termination of this Agreement and/or the Underlying Agreement, as shall the Covered Entity's rights of access and inspection.

e. Governing Law; Conflict. This Agreement shall be enforced and construed in accordance with the laws of the State of California. Jurisdiction of any litigation with respect to this Agreement shall be in California, with venue in a court of competent jurisdiction located in County of San Francisco.

f. Effective Date. This Agreement is effective as of the date the Covered Entity executes this Agreement by signing or clicking "Accept" (PRR accepts the terms of this Agreement by supplying the Agreement to Covered Entity) ("Effective Date") and remains in effect during the entire period the Underlying Agreement is in effect.

g. No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

h. Interpretation and Order of Precedence. The provisions of this Agreement shall prevail over any provisions in the Underlying Agreement that may conflict or appear inconsistent with any provision in this Agreement. Together, the Underlying Agreement and this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA.



## **ADDENDUM TO EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT LIMITED DATA SET USE AGREEMENT**

This Data Use Agreement (the "Agreement") is an addendum to the HIPAA Business Associate Agreement ("Business Associate Agreement"), and is by and between any Podiatric Resident enrolled in Podiatry Residency Resource ("Covered Entity") and PRR ("Limited Data Set Recipient" or "Recipient") (collectively, the "Parties"; each, a "Party") for purposes of complying with the federal standards for privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164, Subparts A and E (the "Privacy Rule").

### **RECITALS**

**WHEREAS**, Limited Data Set Recipient would like to use certain individually identifiable health information maintained by Covered Entity for purposes of health care operations, research, or public health;

**WHEREAS**, Recipient recognizes that Covered Entity is a covered entity under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated thereunder as such laws and regulations may be amended from time to time (collectively, "HIPAA") and that Covered Entity is required by the Privacy Rule adopted pursuant to HIPAA to protect the privacy of the individually identifiable health information maintained by Covered Entity;

**WHEREAS**, the Privacy Rule permit Covered Entity to disclose a Limited Data Set of information to Recipient for purposes of health care operations, research, or public health if Recipient enters into a Data Use Agreement with Covered Entity;

**WHEREAS**, 45 C.F.R. § 164.514(e) of the Privacy Rule requires Covered Entity to receive adequate assurances from Recipient that Recipient will comply with certain obligations with respect to the individually identifiable health information received from Covered Entity; and

**WHEREAS**, the purpose of this Agreement is to comply with 45 C.F.R. § 164.514(e) of the Privacy Rule as it may be amended from time to time.

**NOW THEREFORE**, in consideration of the mutual promises and covenants, herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **A. Definitions.**

1. "Limited Data Set Recipient." "Limited Data Set Recipient" shall mean PRR
2. "Covered Entity." "Covered Entity" shall mean any Podiatric Resident enrolled in Podiatric Residency Resource.
3. "Limited Data Set." "Limited Data Set" shall mean PHI that excludes the following direct identifiers of the individuals or of the relatives, employers, or household members of individual: (i) names; (ii) postal address information, other than town or city, state and zip code; (iii) telephone numbers; (iv) fax numbers; (v) electronic mail addresses; (vi) social security numbers; (vii) medical record numbers; (viii) health plan beneficiary numbers; (ix) account numbers; (x) certificate/license numbers; (xi) vehicle identifiers and serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) web universal resource locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) biometric identifiers, including finger and voice prints; (xvi) full face photographic images and any comparable images.
4. "Individual." "Individual" shall mean the person who is the subject of the Protected Health Information.
5. "Privacy Rule." "Privacy Rule" shall mean the standards for privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164, Subparts A and E.
6. "Protected Health Information" or "PHI." "Protected Health Information" or "PHI" shall mean individually identifiable health information regardless of the form in which it is

maintained or transmitted, limited to the information created or received by Recipient from or on behalf of the Covered Entity.

7. "Required by Law." "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.

Any other terms used in this Agreement, but not defined herein, shall have the same meaning as those terms as defined in HIPAA.

B. Creation and Disclosure of Limited Data Set. Covered Entity agrees to provide Recipient with PHI either in the form of a Limited Data Set or in a form that enables the Recipient to create a Limited Data Set, consistent with 45 C.F.R. § 164.502(d)(1) and 45 CFR 164.514(e)(3)(ii), that can be aggregated together with data and other limited data sets from other covered entities with which or whom Recipient has a business associate relationship or limited data set recipient relationship or other secondary users, consistent with and after identifiers listed in 45 CFR 160.514(e) are removed, and that such Limited Data Sets can be used for the **Recipient's own or other secondary users' general research purposes, public health purposes, or health care operations purposes** as defined in 45 CFR 160.501, including but not limited to benchmarking; conducting quality assessment, utilization review, patient safety, patient care and management improvement activities; peer review; scope of licensure; public health surveillance; resource based value development; health classification or health status registry; outcomes, morbidities and mortalities reviews, evidenced based best practice development, and reviewing the competence or qualifications of health care professionals, among other potential purposes ("Authorized Purposes"). Covered Entity also understands and acknowledges that Recipient may use, license and otherwise disseminate data in the form of a Limited Data Set to agents, or other secondary users and third parties for the same Authorized Purposes, or in the form of analyses of such Limited Data Set information, in its sole discretion, provided, however, that Recipient shall require any such secondary user to comply with the same restrictions and contributions as apply to the Recipient under this Agreement. Covered Entity will not be entitled to any compensation for any such use of such data as described in this paragraph B. Recipient agrees to use and disclose the Limited Data Set only for the Authorized Purposes, and not to use or disclose the Limited Data Set in a manner that would violate the Privacy Rule if the use or disclosure was made by the Covered Entity. Recipient agrees not to use the Limited Data Set in such a way as to identify any individual whose data is incorporated in the Limited Data Set and further agrees not to contact any such individual.

C. Limited Data Set Recipient Obligations. As a condition of receiving the Limited Data Set for purposes of research, public health, or carrying out the Recipient's health care operations, Recipient agrees to comply with applicable federal and state privacy and security laws. Recipient further agrees:

1. not to use or disclose PHI except as necessary to fulfill the purposes of this Agreement as described in Section B above;
2. not to use or further disclose the Limited Data Set in a manner that would violate the Privacy Rule if done by Covered Entity;
3. not to use or further disclose the Limited Data Set other than as permitted by this Agreement or otherwise Required by Law;
4. to use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement;
5. to report to Covered Entity any use or disclosure of the Limited Data Set not provided for by this Agreement of which Recipient becomes aware;
6. to ensure that any agents including any secondary users and third parties to whom it provides all or any portion of the Limited Data Set agrees to the same restrictions and conditions that apply to the Recipient with respect to such information including but not limited to Authorized Purposes;
7. not to identify the individuals who are the subjects of the Limited Data Set or contact such individuals.

D. Term and Termination.

1. Term. The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall remain in effect during the entire period the Business Associate Agreement is in effect.

2. Termination for Breach. If Recipient breaches any provision in this Agreement, Covered Entity may, at its option, access and audit the records of Recipient related to its use and disclosure of the Limited Data Set, require Recipient to submit to monitoring and reporting, and such other conditions as Covered Entity may determine is necessary to ensure compliance with this Agreement, or Covered Entity may terminate this Agreement on a date specified by Covered Entity. In the event of a breach of this Agreement involving a pattern of Recipient improperly using or disclosing data from the Limited Data Set, Covered Entity may also notify the Secretary of the Department of Health and Human Services of the breach.

3. Continued Confidentiality of Information. After the termination of this Agreement, Recipient agrees to maintain the confidentiality of the Limited Data Set as set forth in this Agreement and the Privacy Rule.

E. Miscellaneous.

1. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

[Address on file in Podiatry Residency Resource]

[Attn: Podiatric Resident]

If to Limited Data Set Recipient:

PRR

445 Fillmore Street

San Francisco, CA 94117

Attn: CEO

2. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as needed to assure Covered Entity's compliance with the Privacy Rule.

3. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.

4. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

5. Nature of Agreement. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates; (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates; or (iii) an agency or employment relationship between the Parties or any of their affiliates.

6. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

7. Equitable Relief. Any disclosure or misappropriation of Limited Data Set information by Recipient in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Recipient therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Recipient from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Recipient expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

8. Severability. The provisions of this Agreement shall be severable and, if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

9. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any person other than the Parties to this Agreement or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.

10. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.

11. Entire Agreement. This Agreement, together with the all exhibits, schedules, riders, and amendments, if applicable, which are fully completed and signed by authorized Persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement and any provisions of the exhibits, schedules, or riders, the provisions of this Agreement shall control.

12. Regulatory References. A citation in this Agreement to the Code of Federal Regulations ("C.F.R.") shall mean the cited section as that section may be amended from time to time.

13. Effective Date. This Agreement is effective as of the date the Covered Entity executes this Agreement by signing or clicking "Accept" (PRR accepts the terms of this Agreement by supplying the Agreement to Covered Entity) ("Effective Date") and remains in effect during the entire period the Business Associate Agreement is in effect.