

PATIENT SATISFACTION SURVEY SUBLICENSE AGREEMENT

This agreement ("Agreement") is entered into between THE REAL RATINGS GROUP, LLC, a Washington limited liability company ("Company"), and the client identified above ("Client"). By clicking "Yes" below, the individual clicking "Yes" and identified below represents and warrants that he or she is a duly authorized agent and representative of Client and has been directed by Client to enter into this Agreement on behalf of and for the benefit of Client, and that Client shall be bound by and comply with this Agreement. WHEREAS, Company is authorized by a license agreement (the "SMG License") with SERVICE MANAGEMENT GROUP, INC., a Missouri corporation ("SMG"), to grant to eligible physicians the right to (i) enable their Eligible Patients (as defined below) to voluntarily participate in anonymous, on-line patient satisfaction surveys developed by Company and SMG (the "Surveys"); and (ii) access and use a website developed and hosted by SMG (the "Survey Results Website") to obtain the results of the Surveys and related patient satisfaction measurement data; WHEREAS, Client desires to obtain from Company, and Company is willing to grant to Client, the foregoing rights on the terms and conditions set forth in this Agreement. NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants, agreements and undertakings of the parties, Company and Client hereby agree as follows:

1. Term.

- 1.1 Commencing on the date Client accepts the terms and conditions of this Agreement by clicking "Yes" below ("Effective Date"), Company shall provide the services described below for Client for the compensation agreed upon by the parties:
 - 1.2.1 Annual Term. The term of this Agreement shall be for a period of one year and shall renew automatically for successive periods of one year each thereafter (each a "Renewal Term") unless either party provides written notice of non-renewal at least 30 days prior to expiration of the then current term.
 - 1.2.2 Termination Due to Material Breach. Either party may terminate this Agreement at any time in the event of a material breach of this Agreement by the other party that remains uncured fifteen (15) days after the breaching party's receipt of written notice of such breach. Such termination shall be effective immediately and automatically upon the expiration of the notice period, without further notice or action by either party.
- 1.3 Immediate Termination Upon Termination of SMG License. This Agreement will terminate immediately upon termination or expiration of the SMG License for any reason.
- 1.4 Termination by Company. Company may terminate this Agreement effective immediately by giving written notice to Client upon the occurrence of any of the following: (a) Client's failure to pay the Compensation payable to Company within 5 days after Client's receipt of written notice of Client's failure to pay; (b) Company's good faith determination that the subscription, Surveys, Survey Results Website and/or services provided pursuant to this Agreement violate any applicable law, rule or regulation or violate or infringe any trade secret, trademark, copyright, patent or other intellectual property right of any third party; or (c) Client (i) becomes insolvent or admits its inability to pay its debts when due, (ii) makes an assignment for the benefit of creditors, (iii) files or has filed against it a petition in bankruptcy or seeking reorganization, (iv) has a receiver appointed, (v) institutes any proceeding for the liquidation or winding up of its business, or (vi) ceases active operation of its business.
- 1.5 Survival. Sections 2.1(b), 3, 4, 6, 7, 8, 10, and 14 shall survive termination or expiration of this Agreement.

2. Responsibilities and Obligations of the Parties.

- 2.1 Responsibilities and Obligations of Client.
 - (a) Eligible Patient Information. Client shall provide Company with the names and e-mail addresses of patients of Client who have had or are considering having elective cosmetic surgery which will not be covered in whole or in part by health insurance or any federally-sponsored or state-sponsored health care program (e.g., Medicare, Medicaid, TRICARE, etc.) (each, an "Eligible Patient"), and Client shall indicate whether the Eligible Patient received an initial consultation, cosmetic surgery, or both prior to delivery of the Eligible Patient's information to Company.
 - (b) Maintenance of Intellectual Property Protection. Client shall not remove, disable, manipulate or otherwise adversely affect any means or device intended to prevent unauthorized use or reproduction of any Survey, the Survey Results Website or any underlying software, process, methodology, analysis or know how (collectively, the "SMG Products"), including, without limitation, removal or obscuration of any copyright, trademark notice or restrictive legend. Except as otherwise expressly permitted by this Agreement, Client shall not (i) decompile, reverse engineer or disassemble the SMG Products or otherwise attempt to reconstruct or discover any of SMG's trade secrets; (ii) disclose, disseminate, grant access to, copy, reproduce, deliver, transmit, publish, display, sublicense, lease, rent, lend, assign or otherwise transfer any SMG Products, or any portion thereof or any derivation thereof, via any medium whatsoever, by operation of law or otherwise to any third party, directly or indirectly, without SMG's prior written consent; or (iii) alter, hide or remove from any part of the SMG Products any proprietary rights or copyright notices or identification that indicate SMG's ownership interest therein. Without limiting the foregoing, in no event shall Client or its authorized users, directly or indirectly, use any of the SMG Products to develop a product competitive with any SMG Product. Client shall take any and all commercially reasonable actions which are reasonably necessary or desirable to prevent access to the SMG Products which Client possesses or to which Client has access or use thereof by any person or entity not authorized hereby. Client shall ensure that its authorized users comply with the provisions of this Section 2.1(b). Client shall promptly notify Company in writing of any unauthorized disclosure or use of any SMG Products of which Client becomes aware.
- 2.2 Responsibilities and Obligations of Company after Compensation Arrangement is Established.
 - (a) Sublicense. After the parties have entered into a compensation arrangement as described above, on the terms and conditions set forth in this Agreement and for the Compensation set forth in Section 3, Company grants to Client a limited, nonexclusive, royalty-bearing right and sublicense to (i) authorize and enable Client's Eligible Patients to voluntarily participate in the Surveys on such terms and conditions as may be established by Company and SMG from time to time; and (ii) access and use the Survey Results Website to obtain the results of the Surveys and related patient satisfaction measurement data (the "Sublicense"). Access to the Survey Results Website shall be restricted through the use of unique user names and passwords, and the Survey Results Website shall be used only by Client's personnel for the purposes of viewing and using the data compiled and made available under this Agreement. Client shall not allow any third party to access or view the Survey Results Website. The Sublicense shall terminate immediately upon termination or expiration of this Agreement.

- (b) Set Up. Company shall assist Client with the establishment of its user account with SMG and will provide advice and assistance to Client in connection with Client's retrieval of data from the Survey Results Website.
- (c) Invitation. Company shall e-mail or otherwise provide to each Eligible Patient identified by Client an invitation to complete a patient satisfaction Survey (the "Invitation").
- (d) Surveys. Company shall make two versions of the Survey available for completion by Eligible Patients. The first Survey shall be designed for completion by prospective patients who have participated in a cosmetic surgery consultation with Client. The second Survey shall be designed for completion by patients who have obtained cosmetic surgery services from Client.
- (e) Survey Results. Company shall make the results of the Surveys and related patient satisfaction measurement data available to Client on the Survey Results Website. Client understands and agrees the Surveys will be anonymous and Client will not have access to or be provided the identity of the Eligible Patient who completed the Survey unless the patient elects to waive his or her right to anonymity and voluntarily discloses his or her identity to Client.

3. Compensation.

- 3.1 Annual or Monthly Fee. As compensation for the services and sublicense provided by Company, Client shall pay Company the compensation agreed upon by Client and Company ("Compensation"). The Compensation shall be payable in a lump sum in advance ("Annual Fee") or in monthly installments (each a "Monthly Fee"), as selected by Client and agreed upon by Company. The Annual Fee or the initial Monthly Fee, as applicable, shall be paid to Company by Client on or before the Effective Date. Compensation for each Renewal Term shall be paid by Client in advance on or before commencement of the Renewal Term. Client understands and agrees Company shall not provide invoices for Renewal Terms.
- 3.2 Set-Up Fee. To the extent applicable, on or before the Effective Date, Client shall pay Company the one-time activation fee agreed upon by Client and Company.
- 3.3 Taxes. In addition to the Compensation payable under this Section 3, Client shall be solely responsible for and shall pay all local, state and federal sales, use, withholding, excise, personal property, value-added, or other similar taxes, assessments or duties which arise out of or are related to the granting of the sublicense or the provision of services under this Agreement, if any, but not Company's income taxes. Client agrees to indemnify Company as to all such taxes.
- 3.4 Interest and Late Payment Penalty. Compensation not paid when due shall bear interest at the annual rate of twelve percent (12%) or the maximum rate of interest allowed by law, whichever is less. Payments shall be applied first to accrued interest and second to the outstanding principal amount owed. If payment is not received by Company on or before the date on which it is due, Client shall pay to Company a late fee equal to five percent (5%) of the past due amount.

4. Confidentiality.

"Confidential Information" shall mean all information, in whatever form or media, provided by a party (the "Discloser") to the other party (the "Recipient") concerning the Discloser or its business, products or services that are not generally known to the public including, without limitation, information relating to the Discloser's business affairs, customers, vendors, trade secrets, prices, products, services, accounting, marketing, finances, business systems and computer programs. "Confidential Information" shall also include all information, in whatever form or media, provided or otherwise made known or available to Client concerning SMG or its business, products or services that are not generally known to the public including, without limitation, information relating to SMG's business affairs, customers, vendors, trade secrets, prices, products, services, accounting, marketing, finances, business systems and computer programs, the Surveys, the Survey Results Website and the contents thereof and the underlying software, process, methodologies, analysis and know how, and all of SMG's intellectual property and proprietary rights in developing satisfaction surveys and measuring the results of same. With respect to SMG Confidential Information, SMG shall be the "Discloser." Confidential Information does not include information that (a) was known to the Recipient before disclosure by the Discloser; (b) is or becomes information within the public domain (through no fault of the Recipient); (c) is independently developed by the Recipient; (d) is rightfully received by the Recipient from third parties not subject to an obligation of confidence to the Discloser; or (e) the release of which is approved by the Discloser in writing. Each Recipient agrees that any Confidential Information disclosed to or otherwise received by it will be used solely for the purpose of fulfillment of each party's obligations under this Agreement or as otherwise permitted in this Agreement. In addition, Client agrees that Company and SMG will have access to Client Survey respondent data and may use or disclose the same as provided herein. Except as expressly authorized under this Agreement, without the prior written consent of the Discloser, the Recipient shall not use or disclose to any third party any Confidential Information disclosed by the Discloser to the Recipient, nor permit any third party to have access to such Confidential Information, nor use such Confidential Information for any purpose that will breach confidentiality or violate ownership rights. If the Recipient or any of its representatives are required or requested (by legal process, civil investigative demand or similar process) to disclose any Confidential Information, the Recipient will promptly notify the Discloser so that the Discloser may seek an appropriate protective order or waive compliance with the confidentiality obligations of this Agreement. Each Recipient further agrees that, except as otherwise expressly provided under this Agreement, upon termination or expiration of this Agreement, each Recipient will immediately deliver to the Discloser all the materials and things embodying any of the Confidential Information and the Recipient shall not retain any copies or reproductions thereof nor shall the Recipient dispose of any such materials and things or copies or reproductions thereof to any third party.

5. Notices.

Any notices given hereunder shall be in writing and shall be given or made by confirmed facsimile, by certified or registered mail or by overnight carrier with confirmed delivery notification, to the parties at the address indicated below, or to such other address as a party may specify from time to time by notice in accordance with this section. Any such notice shall be deemed to have been given on the date it is actually received.

6. Ownership of Data.

Client shall own all data collected by SMG in connection with administration of the Surveys other than the names and contact information of the patients and prospective patients who participate in the Surveys, unless such patients or prospective patients authorize the disclosure of their names and contact information to Client. Client shall not use any data collected by SMG or reported Results for any third-party reporting requirements. SMG shall be the sole and exclusive owner of all presentations and reports generated by SMG and made available to Client; provided, however, that Client shall have a perpetual, royalty-free, worldwide right and license to make copies of all presentations and reports delivered in hard copy to Client by SMG. All other intellectual property and proprietary rights of any kind relating to this Agreement, the Surveys and the Survey Results Website, including without limitation, all computer programming, software and computer interfaces, know-how, methodologies, designs and processes, will remain at all times the sole and exclusive property of SMG. Without limiting the generality of the foregoing, Client acknowledges that all right, title and interest in and to the SMG Products (and all copies thereof) and any portions thereof that may be embodied in a derivative work, including all associated patents, copyrights, trademarks, trade names, trade secrets, know-how and other intellectual property rights related thereto, are, and shall at all times remain, the exclusive property of SMG. Client hereby grants to Company and SMG a nonexclusive, perpetual, royalty-free, worldwide right and license to use the data collected in the Surveys for

any purpose whatsoever and in any form or medium, provided, however, that such data does not compromise the confidentiality of Client or the Eligible Patients who participated in the Surveys.

7. Business Associate Addendum.

Client shall comply with the Business Associate Addendum to this Agreement set forth below. Client hereby agrees that SMG shall be a subcontractor of Company as permitted by the Business Associate Addendum.

8. Disclaimer of Warranties and Limitation of Liability.

THE SMG PRODUCTS ARE PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS AND COMPANY AND SMG EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING OR RELATING TO THE SMG PRODUCTS, OR TO ANY SERVICES OR OTHER MATERIAL FURNISHED OR PROVIDED TO CLIENT PURSUANT TO THIS AGREEMENT. COMPANY AND SMG SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTY ARISING UNDER STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. FURTHER, COMPANY AND SMG DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF, OR THE RESULT OF THE USE OF, THE SMG PRODUCTS IN TERMS OF CORRECTNESS, QUALITY, ACCURACY, RELIABILITY, OR OTHERWISE AND CLIENT RELIES ON THE SMG PRODUCTS SOLELY AT ITS OWN RISK. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY COMPANY, SMG OR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES OR THIRD-PARTY SUPPLIERS SHALL CREATE A WARRANTY, AND CLIENT IS NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION. THIS DISCLAIMER OF WARRANTIES IS AN ESSENTIAL CONDITION OF THE AGREEMENT. IN NO EVENT WILL COMPANY OR SMG BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING UNDER TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORIES ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF COMPANY AND/OR SMG IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL COMPANY'S OR SMG'S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE PAYMENTS MADE BY CLIENT TO COMPANY UNDER THIS AGREEMENT IN THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

9. Entire Agreement; Modification; Effective Laws.

This Agreement shall constitute the entire agreement between Client and Company with respect to the subject matter hereof. Except as provided elsewhere in this Agreement to the contrary, no modification hereof shall be effective unless the same is in writing signed by Client and Company. This Agreement is entered into and shall be governed by and construed under the laws of the State of Washington. Any and all disputes arising under or out of this Agreement shall be brought in the City of Seattle, King County, Washington.

10. Intended Third-Party Beneficiary.

SMG is an intended third-party beneficiary of this Agreement. The covenants and obligations undertaken by Client herein are intended for the direct benefit of SMG, and this Agreement may be enforced by SMG directly against Client.

11. Agreement Binding; Survival.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns. Client may not assign this Agreement or any of its rights or obligations hereunder without the express prior written approval of Company. Any assignment in violation of this provision shall be void and of no force and effect. All provisions hereof relating to rights or obligations regarding payment of amounts due or regarding indemnities shall survive the termination of this Agreement.

12. Captions and Titles.

All paragraph, section, addendum, and schedule titles contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

13. Controlling Agreement.

This Agreement shall control the relationship between the parties and supersedes any prior agreements unless otherwise indicated.

14. Attorneys' Fees.

If any party commences or is made a party to any litigation, arbitration or other proceeding to enforce, interpret or obtain a declaration of rights under this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the other party reasonable attorneys' fees and costs incurred in connection with such proceedings, any appeal of such proceeding and the enforcement of any judgment obtained in such proceeding.

15. Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by delivery of a facsimile or electronically recorded copy (including a .pdf file) bearing a copy of the signature of a party shall constitute a valid and binding execution and delivery of this Agreement by such party. Such copies shall constitute enforceable original documents.

16. Waiver.

No waiver of any breach of any provisions of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach and no waiver will be effective unless made in writing. If any provision of this Agreement is deemed unlawful, void or for any reason unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of the remaining provisions.

17. Force Majeure.

Neither party will be liable for any failure or delay in its performance under this Agreement, except the making of payments, due to causes which are beyond its reasonable control, including an act of God, act of civil or military authority, fire, epidemic, flood, earthquake, riot, war, act of terrorism, sabotage, failure of suppliers and remaining provisions.

18. Construction.

This Agreement has been negotiated at arm's length and each party has been given the opportunity to be represented by legal counsel and to the extent each party has deemed necessary, each party has consulted with independent legal counsel with respect to such party's rights and obligations under this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting

it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the parties and the purpose of this Agreement.

BUSINESS ASSOCIATE ADDENDUM

1. UNDERLYING FACTS / RECITALS

- 1.1 Pursuant to this Agreement ("Services Agreement"), Company provides patient satisfaction survey and related services for Client. In connection with the provision of such services by Company, Client discloses to Company or Company creates or receives on behalf of Client certain Protected Health Information ("PHI") and Electronic Protected Health Information ("E PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.A. Sections 1320d-1320d-7, 45 C.F.R., Parts 142 and 160 through 164, as amended ("HIPAA"). For purposes of this agreement, all references to PHI shall mean and include both PHI and E PHI.
- 1.2 Client may be a "Covered Entity," as that term is defined in HIPAA. If Client is a Covered Entity, Company, as recipient of PHI from Client, is a "Business Associate" of Client, as that term is defined in HIPAA.
- 1.3 Pursuant to HIPAA, all business associates of Client, as a condition of doing business with Client, must agree in writing to certain mandatory provisions regarding, among other things, the use and disclosure of PHI.
- 1.4 The purpose of this addendum is to satisfy the requirements of the HIPAA Privacy Rule and Security Rule, 45 C.F.R. Parts 160 and 164, as amended by Title XIII of Division A of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the "Secretary") at Federal Register, Vol. 78, No. 17, Page 5566, Friday, January 25, 2013 (the HITECH Omnibus Final Rule), as may be amended from time to time.

2. DEFINITIONS

Unless otherwise defined in this addendum, capitalized terms shall have the meanings set forth in HIPAA and the HITECH ACT, as amended.

3. APPLICABILITY

As used in this addendum, PHI means and includes (i) Individually Identifiable Health Information created or received by Company for or on behalf of Client; (ii) Individually Identifiable Health Information disclosed to Company by Client; and (iii) Individually Identifiable Health Information disclosed to Company to enable Company to perform services for Client pursuant to the Services Agreement. PHI does not include and this addendum is not applicable to Individually Identifiable Health Information created or received by or disclosed to Company in connection with services rendered by Company outside the scope of the Services Agreement.

4. USE AND DISCLOSURE OF PHI BY COMPANY

- 4.1 Permitted Uses. Company shall not use or disclose PHI for any purpose other than:
 - (a) as permitted or required by this addendum or the Services Agreement;
 - (b) for the proper management and administration of Company or to carry out the legal responsibilities of Company, if (i) the disclosure is required by law; or (ii) Company 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 Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - (c) as required or allowed under HIPAA and the HITECH Act; or
 - (d) as otherwise Required by Law. In no event shall Company use or disclose PHI in a manner that violates or would violate HIPAA if such activity were engaged in by Client. Further, Company shall use and disclose PHI only if such use or disclosure is in compliance with each applicable requirement of 45 C.F.R. Section 164.504(e) (i.e., the HIPAA standard with respect to business associate contracts).
- 4.2 Minimum Necessary Limitation. Company shall request from Client and disclose to its affiliates, subsidiaries, agents and subcontractors or third parties only the minimum amount of PHI necessary to perform or fulfill a specific function required or permitted under the Services Agreement.

5. SAFEGUARDS FOR THE PROTECTION OF PHI

Company shall implement and maintain such administrative, operational, technical and technological safeguards as are necessary to ensure that PHI disclosed to or created or received by Company is not used or disclosed by Company, or by any subcontractors, affiliates, or business associates of Company, except as provided in the Services Agreement and/or this addendum, and in so doing Company shall comply with all terms, conditions, and requirements of the HIPAA Privacy Rule and HIPAA Security Rule applicable to Company.

6. REPORTING OF UNAUTHORIZED USES OR DISCLOSURES

Company shall promptly report to Client any use or disclosure of PHI of which Company becomes aware that is not provided for or permitted in the Services Agreement, this addendum or HIPAA. Company shall permit Client to investigate any such report in accordance with the provisions of paragraph 14 of this addendum. Company shall ensure that any agents to whom Company provides PHI received from, or created or received by Company on behalf of, Client agree to the same restrictions and conditions that apply to Company with respect to such PHI.

7. MITIGATION

Company shall use commercially reasonable efforts to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI of which Company becomes aware that is not provided for or permitted in the Services Agreement, this addendum, or HIPAA.

8. USE OF SUBCONTRACTORS

Company shall ensure that each subcontractor to whom Company provides access to PHI that is received from Client or that is created or received on behalf of Client enters into a HIPAA-compliant Business Associate Agreement with Company that contains, at a minimum, all of the requirements set forth in this addendum that are applicable to Company. Such agreement shall require that the subcontractor and each downstream subcontractor of the subcontractor comply with the terms of this paragraph 8 with respect to their subcontractors.

9. AUTHORIZED ACCESS TO PHI

At the request of Client and in the time and manner reasonably designated by Client, including in electronic form, Company shall provide to Client PHI in a Designated Record Set so that Client can provide access to the PHI contained in the Designated Record Set to the individual who is the subject of the PHI in accordance with 45 C.F.R. Section 164.524.

10. AMENDMENT OF PHI

At the request of Client and in the time and manner reasonably designated by Client, Company shall provide to Client PHI in a Designated Record Set so that Client can amend the PHI in the Designated Record Set in accordance with 45 C.F.R. Section 164.526.

11. ACCOUNTING OF DISCLOSURES OF PHI

Company shall document in writing and provide to Client all information necessary to enable Client to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528 ("Disclosure Accounting"), as required by 45 C.F.R. Section 164.504(e)(2)(ii)(G), upon Company's making of a disclosure for which an accounting is required under 45 C.F.R. Section 164.528 and upon request. Company shall provide such information as is necessary to provide an accounting within ten (10) days of Client's request. Such accounting must be provided without cost to the individual or to Client if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Company informs Client and Client informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this agreement and shall continue as long as Company maintains PHI. At a minimum, the Disclosure Accounting shall contain:

- (a) the date of the disclosure;
- (b) the name of the entity or person to whom or which the PHI was provided and, if known, the address of such entity or person;
- (c) a brief description of the PHI disclosed; and
- (d) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure or, in lieu of such statement, a copy of the Individual's written authorization or request for disclosure pursuant to HIPAA. Company shall maintain a copy of the Disclosure Accounting for a period of at least 6 years from the date of the disclosure.

12. AGREEMENT TO RESTRICT DISCLOSURES

If Client is required to comply with a restriction on the Disclosure of PHI pursuant to Section 13405 of the HITECH Act, then Client shall, to the extent necessary to comply with such restriction, provide written notice to Company of the name of the individual requesting the restriction and the PHI affected thereby. Company shall, upon receipt of such notification, not Disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law. Client shall also notify Company of any other restriction to the Use or Disclosure of PHI that Client has agreed to in accordance with 45 C.F.R. Section 164.52.

13. EPHI

With respect to EPHI, Company shall:

- (a) comply with the provisions of 45 C.F.R. Sections 164.308, 164.310, 164.312, 164.314 and 164.316 to the extent such provisions are applicable to Company pursuant to Section 13401(a) of Title XIII of Division A of the HITECH Act;
- (b) comply with all requirements of the HITECH Act that relate to security and are applicable to Client and Company;
- (c) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that Company creates, receives, maintains and/or transmits on behalf of Client, as required by the HIPAA Security Rule, 45 CFR Part 164, Subpart C;
- (d) ensure that any agent, including a subcontractor, to whom Company provides EPHI agrees to implement reasonable and appropriate safeguards to protect the EPHI; and
- (e) subject to attached Schedule 13, report to Client any Security Incident of which Company becomes aware.

14. NOTIFICATION OF BREACH OF UNSECURED PHI

To the extent Company accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses Unsecured PHI, Company shall, following the Discovery of a Breach of such PHI, notify Client of such Breach. Such notice shall include detailed information about the breach and the name and contact information of each individual whose Unsecured PHI has been, or is reasonably believed by Company to have been, accessed, acquired or disclosed during such Breach. A notification required pursuant to this paragraph shall be promptly, but in any case, no later than fifteen (15) calendar days after the discovery of a Breach by Company. A Breach shall be treated as discovered by Company as of the first day on which such Breach is known to Company or the first day on which such Breach would have been known to Company had Company exercised reasonable diligence. Company shall be deemed to have knowledge of a Breach if the Breach is known or should have been known by the exercise of reasonable diligence to any person, other than the person committing the breach, who is an employee, officer, or other agent of Company (determined in accordance with the Federal common law of agency).

15. STATE PRIVACY LAWS

Company shall comply with state privacy laws to the extent such laws are not preempted by HIPAA or the HITECH Act.

16. RIGHT TO AUDIT

Company shall make its practices, books and records related to PHI available to the Secretary and to Client for the purpose of determining Company's compliance with this addendum and HIPAA, and Company shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of Company to determine whether Company is complying with the applicable administrative simplification provisions of HIPAA. If any information required of Company under this paragraph is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, Company shall certify and describe the efforts Company has made to obtain the information. If it is determined that Company's conduct would result in violation of HIPAA by Client or is in violation of this addendum, Company shall promptly remedy any such violation and shall certify the same in writing to Client.

17. STANDARD TRANSACTIONS

If Company conducts any Standard Transactions on behalf of Client, Company shall comply with the applicable requirements of 45 C.F.R. Part 162.

18. OBLIGATIONS OF CLIENT

Client shall notify Company of:

- (a) any limitations in its notice of privacy practices, to the extent such limitations may affect Company's use or disclosure of PHI;
- (b) any changes in, or revocation of, permission by the Individual who is the subject of the PHI, to the extent such changes may affect Company's use or disclosure of PHI; and
- (c) any restriction to the use or disclosure of PHI Client has agreed to in accordance with 45 C.F.R. Section 164.522, to the extent such restriction may affect Company's use or disclosure of PHI.

19. TERM AND TERMINATION

- 19.1 Term. The term of this addendum shall commence on the date Client accepts the terms and conditions of the Services Agreement by clicking "Yes" below and shall terminate when all of the PHI provided by Client to Company or created or received by Company on behalf of Client is destroyed or returned to Client pursuant to paragraph 19.3.
- 19.2 Termination Upon Breach. Upon knowledge by one party (the "Nonbreaching Party") of the breach of a material provision of this addendum by the other party (the "Breaching Party"), the Nonbreaching Party shall:
 - (a) if cure of the breach is possible, provide the Breaching Party written notice of such breach and a reasonable opportunity to cure such breach. If the Breaching Party does not cure the breach within a reasonable period of time designated by the Nonbreaching Party, the Nonbreaching Party may terminate the Services Agreement immediately, with termination effective as of the date the Nonbreaching Party gives notice of termination to the Breaching Party;
 - (b) if cure of the breach is not possible in the reasonable determination of the Nonbreaching Party, the Nonbreaching Party may terminate the Services Agreement immediately, with termination effective as of the date the Nonbreaching Party gives written notice of termination to the Breaching Party; and
 - (c) if cure of the breach and termination of the Services Agreement are not possible in the reasonable determination of the Breaching Party, the Services Agreement shall not be terminated, but further uses and disclosures of PHI shall be limited to those purposes making termination of the Services Agreement not possible.
- 19.3 Protection of PHI After Expiration or Termination. Upon termination of the Services Agreement for any reason, Company shall, at Client's expense, return to Client or, at Client's direction, delete, purge and destroy, all PHI in any form, recorded on any medium, or stored in any storage system. Client or Company may, in their reasonable discretion, determine that return or destruction of the PHI is infeasible, in which event Company shall extend the protections of this addendum to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible. Company shall remain bound by the provisions of this addendum after termination of the Services Agreement until such time as all PHI has been returned or otherwise destroyed as provided in this paragraph.

20. GENERAL PROVISIONS

- 20.1 Amendment. The parties acknowledge that state and federal laws related to privacy of PHI are rapidly evolving and that amendment of this addendum may be required to comply with applicable laws. The parties shall negotiate in good faith to amend this addendum when and as necessary to comply with applicable laws. If either party does not agree to so amend this addendum within 30 days after receiving a request for amendment from the other, either party may terminate the Services Agreement upon written notice. To the extent an amendment to this addendum is required by law and this addendum has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this addendum automatically and without further action required by either of the parties.
- 20.2 Severability. Each provision of this addendum is independent, separate and divisible, and in the event any provision shall be held to be invalid or unenforceable, the remaining provisions shall continue to be in full force and effect.
- 20.3 Construction. This addendum shall be construed to implement and comply with HIPAA, as applicable to Client and Company. Any ambiguity in this addendum shall be resolved in favor of a meaning that complies with HIPAA.
- 20.4 Effect of Addendum. The sole purpose of this addendum is to ensure compliance with HIPAA and the HITECH Act. This addendum is not intended to, nor shall it be construed to, reduce or diminish any of Company's or Client's rights or obligations under the Services Agreement. If there is any conflict between the provisions of the Services Agreement and this addendum, the terms and conditions of this addendum shall control.

SCHEDULE 13

REPORTING OF ATTEMPTED SECURITY INCIDENTS

The parties understand and agree the reporting of all routine, minor and unsuccessful attempts to access, use, disclose, modify or destroy PHI in Company's possession or control or to interfere with system operations in Company's information system would create an undue and unnecessary burden on both Client and Company.

Company hereby notifies Client that Company is subject to the following ongoing types of unsuccessful attempts to access, use, disclose, modify or destroy information or to interfere with system operations in Company's information systems:

- pings on Company's firewall;
- port scans;
- attempts to log on to a system or enter a database with an invalid user name or password;
- denial-of-service attacks that do not result in a server being taken off-line;
- malware, such as worms or viruses, that do not penetrate Company's perimeter and protection systems.

If Company experiences routine attacks that are generally thwarted by its security systems and are not identified above, the parties shall amend this Schedule 13 to identify such additional attacks.

Company shall not be required to notify Client of each unsuccessful attempt described above, but Company shall maintain an internal record (electronic or otherwise) of such attempts and shall make such internal record available to Client and the Secretary of the Department of Health and Human Services upon request. Records of unsuccessful attempts shall be maintained by Company for at least 6 years.

Notwithstanding the foregoing, if an attempt is of sufficient severity that Company's system must be taken off-line or PHI is at substantial risk of disclosure, Company shall promptly notify Client of the attempt.