

XDR Radiology Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into _____ (the "Effective Date") by and between Cyber Medical Imaging, Inc. dba XDR Radiology ("Business Associate") and _____ ("Covered Entity") (individually, a "Party," and collectively the "Parties") and is intended by the parties to supplement, be part of, and be incorporated into all existing and future contracts among the Parties (the "Contracts").

RECITALS

A. Covered Entity is subject to the provisions of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated under HIPAA or HITECH by the U.S. Department of Health and Human Services ("HHS"), as amended from time to time (collectively, hereinafter "HIPAA").

B. Business Associate is also subject to certain provisions of HIPAA as modified by HITECH.

C. Pursuant to the Contracts, it may be necessary for Covered Entity to disclose certain information to Business Associate, some of which may contain Protected Health Information.

D. Covered Entity and Business Associate intend to protect the privacy and provide for the security of Protected Health Information used or disclosed to one another pursuant to any of the Contracts in compliance with HIPAA and other applicable federal and/or state laws.

E. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA.

NOW THEREFORE, the Parties agree as follows:

1. Definitions.

1.1 "HIPAA Rules" shall refer to the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.2 "Privacy Wrongful Act" means any actual or alleged unauthorized collection, access, acquisition, Use, Disclosure, or handling of PHI, or failure to protect the confidentiality or privacy of PHI, by Business Associate, to the extent caused by Business Associate's acts or omissions.

1.3 "Professional Services Error" means any negligent act, error, or omission by Business Associate in the performance of the services under the Agreement that results in a Privacy Wrongful Act or Security Failure, excluding acts outside the scope of the services or conduct directed by Covered Entity.

1.4 "Security Failure" means any actual or alleged failure of Business Associate's administrative, physical, or technical safeguards that results in unauthorized access to,

acquisition, Use, Disclosure, alteration, or destruction of PHI, including a data security breach, malware event, ransomware incident, or hacking event, to the extent arising from Business Associate's failure to maintain reasonable and appropriate safeguards required by applicable law.

1.5 The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. Covered Entity's General Obligations.

2.1 Covered Entity shall Use Business Associate's products in compliance with all applicable state, federal, and local laws and regulations, including but not limited to the HIPAA Rules and all other laws concerning the access, use, and disclosure of Protected Health Information.

2.2 Covered Entity is solely responsible for the diagnosis and treatment planning of each patient, and bears the sole responsibility of exercising professional judgment to determine how to use the radiographic and other information provided by Business Associate's products in the diagnosis, treatment planning, or dispensation of any medical opinion.

2.3 Covered Entity shall be solely responsible for the security, integrity, and maintenance of all Protected Health Information and other data hosted at Covered Entity's dental office, at any other locations under Covered Entity's ownership or control, and by any management services organization ("MSO") engaged by Covered Entity. Nothing in this Agreement shall be construed to transfer such responsibilities to Business Associate.

3. Business Associate's General Obligations. In addition to the Uses and Disclosures of PHI set forth in Section 5, Business Associate may automatically extract data, which shall not include any Protected Health Information, for analytical and product improvement purposes. Business Associate shall cease such automatic extraction of data upon receipt of written request from Covered Entity. At Covered Entity's request, Business Associate may collect Protected Health Information in accordance with the terms set forth below in this Agreement.

4. Limitation of Liability. Business Associate's entire liability hereunder for claims of any kind, whether arising in tort or contract, shall be limited to the license fees and invoiced costs paid by Covered Entity for Business Associate's products for which such damages are claimed. Business Associate shall not be liable for any indirect, special, incidental, punitive, consequential, or exemplary damages arising from or relating to this Agreement, regardless of the type of claim, including but not limited to lost profits or business.

5. Permitted and Required Uses and Disclosures of Protected Health Information. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in this Section.

5.1 Business Associate may use Protected Health Information for its own management and administration or to carry out the legal responsibilities of Business Associate.

5.2 Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate provided that such Disclosures are required by law, or Business Associate obtains reasonable written assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances in which the confidentiality of the information has been Breached.

5.3 Business Associate may use or disclose Protected Health Information received from Covered Entity to provide data aggregation services relating to Covered Entity's Health Care Operations.

5.4 Business Associate may use or disclose Protected Health Information received from Covered Entity as necessary to fulfill Business Associate's obligations under the Contract.

5.5 Business Associate may use Protected Health Information to de-identify the information in accordance with 45 CFR 164.514, to the extent permitted by law.

6. Obligations and Activities of Business Associate. Business Associate agrees to:

6.1 Not use or disclose Protected Health Information other than as permitted or required by the Contract and/or this Agreement or as required by law.

6.2 Implement appropriate safeguards to prevent the Use or Disclosure of PHI other than pursuant to the terms and conditions of the Contract. To the extent that Business Associate accesses, creates, receives, maintains or transmits Electronic PHI ("ePHI") in performance of its duties on behalf of Covered Entity, Business Associate shall comply with the HIPAA Security Rule (45 C.F.R. Part 164, Subpart C), and accordingly shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI.

6.3 Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Contract or this Agreement of which it becomes aware, including Breaches of Unsecured PHI in accordance with 45 CFR 164.410, and any Security Incident of which it becomes aware. In connection with the foregoing:

- (a) Within five (5) business days of discovery of a Use or Disclosure of Unsecured PHI not authorized by this Agreement, including a Security Incident, Business Associate will report the violation in writing to the Covered Entity's Privacy Officer. To the extent that information about the Individuals whose information was Breached is not known at time of notification to Covered Entity, Business Associate will provide such information as soon as it becomes known to Business Associate but in no case more than thirty (30) days after the initial notification to Covered Entity.
- (b) For purposes of this Agreement, a Breach is considered discovered on the first day that it is known to Business Associate or one of its directors, officers, employees, agents, or contractors other than the individual who committed the Breach.

- (c) Business Associate will reasonably cooperate with any investigation of such an incident conducted by Covered Entity in connection with any report made pursuant to this Section 6.3.

6.4 If Business Associate provides any agent or subcontractor access to Protected Health Information that is received from Covered Entity, or is created or received by Business Associate on behalf of Covered Entity, Business Associate will enter into an agreement with the agent or subcontractor requiring the agent or subcontractor to follow the same restrictions, terms, and conditions of this Agreement that apply to Business Associate with respect to the Protected Health Information.

6.5 Make available to Covered Entity Protected Health Information for inspection and copying in accordance with under 45 CFR 164.524.

6.6 Make available to Covered Entity Protected Health Information for amendment and incorporate any amendments to Protected Health Information, where appropriate, in accordance with 45 CFR 164.526.

6.7 Make available to Covered Entity information in Business Associate's possession required to provide an accounting of disclosures in accordance with 45 CFR 164.528.

6.8 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

6.9 Make Business Associate's 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 the Covered Entity available to the Secretary, in the time and manner designated by the Secretary, for purposes of determining Covered Entity's compliance with the HIPAA Rules.

6.10 To the extent that Business Associate is responsible for performing Covered Entity's obligations under the Privacy Rule, under the Contract or otherwise, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

7. Obligations of Covered Entity.

7.1 Covered Entity shall promptly provide Business Associate with any notices of privacy practices pursuant to 45 CFR 164.520, and any changes thereto.

7.2 Covered Entity shall promptly notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

7.3 Covered Entity shall promptly notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

7.4 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

8. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

9. Term and Termination.

9.1 Term. The Term of this Agreement shall be effective as of the date above and shall terminate only when all PHI provided to Business Associate is destroyed or returned to the extent feasible or on the date either Party terminates for cause as authorized in Section 9.2 below, whichever is sooner.

9.2 Termination for Cause. Either Party may terminate this Agreement in the event one Party breaches any term of this Agreement, the non-breaching Party notifies the breaching Party of such breach, and the breaching Party fails to cure the breach within thirty (30) days following notification.

9.3 Obligations of Business Associate Upon Termination. At termination of this Agreement, Business Associate will, if feasible, return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible. The obligations of Business Associate under this Section 9.3 shall survive the termination of this Agreement.

10. Mutual Indemnification.

10.1 Indemnification by Business Associate. Business Associate shall indemnify, defend, and hold harmless Covered Entity from losses arising out of third-party claims to the extent caused by a Privacy Wrongful Act, Security Failure, or Professional Services Error by Business Associate.

10.2 Indemnification by Covered Entity. Covered Entity shall indemnify, defend, and hold harmless Business Associate from losses arising out of third-party claims to the extent caused by Covered Entity's violation of the HIPAA Rules, failure to maintain required safeguards, or negligence in handling PHI within Covered Entity's control.

10.3 Covered Losses. Indemnifiable losses are limited to defense costs, settlements or judgments, legally required breach notification expenses, and regulatory defense costs or penalties to the extent insurable by law.

10.4 Procedures and Limits. Each Party's indemnification obligations are conditioned on prompt notice, control of defense by the indemnifying Party, and are capped at insurance limits or fees paid, whichever is greater.

11. No Waiver. A failure to enforce a term of this Agreement shall not be a waiver of any right under any such term or condition or a waiver of any breach or default, unless accompanied by a clear written statement that such breach, default, term or condition is waived.

12. Governing Law and Construction. Subject to Section 8, this Agreement shall be governed and enforced in accordance with the laws of the state of California.

13. Severability. In the event that any provision of this Agreement is deemed invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, and this Agreement shall continue in full force and effect.

14. Notices. Notices to be given under this Agreement shall be given to the respective Parties in writing either by personal delivery, facsimile, email, overnight delivery service, or registered or certified mail, postage prepaid, at the address of each Party as indicated on the signature page to this Agreement or at such other addresses and to such other persons as either Party may from time to time designate by notice given as herein provided. Such notices shall be deemed to have been given (i) upon receipt or refusal of receipt if personally delivered; (ii) upon verbal or written acknowledgment if sent by facsimile; (iii) upon transmission if sent by email, provided that no bounce-back or other error message is received; (iv) one (1) day after delivery to an overnight delivery service; and (v) no later than three (3) days after deposit in the United States mail if sent by regular, registered, or certified mail, postage prepaid.

15. Headings in this Agreement. The headings in this Agreement are for convenience only, confirm no rights or obligations of either Party, and do not alter the terms of this Agreement.

16. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter herein and may be amended only in a writing signed by the Parties. This Agreement supersedes all prior agreements, proposals, or communications with respect to the subject matter of this Agreement. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall be considered one and the same Agreement. Signatures provided by facsimile or in portable document format (a/k/a pdf) or other electronic format shall be binding as original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COVERED ENTITY:

Legal Business Name: _____

By: _____
Name: _____
Its: _____

Notice Address:

Attention: _____
Facsimile: _____
Email: _____

BUSINESS ASSOCIATE:

Legal Business Name: Cyber Medical
Imaging, Inc. dba XDR Radiology

By: _____
Name: Alexandru Chitea
Its: President & CEO

Notice Address:

Cyber Medical Imaging, Inc.
11300 W. Olympic Blvd, Ste 710
Los Angeles, CA 90064
Attention: President and CEO
Facsimile: 888-937-9728
Email: service@XDRradiology.com