

WebPT Business Associate Agreement

This Business Associate Agreement (the "BAA"), is hereby entered into between Covered Entity hereinafter referred to as "Covered Entity", and WebPT, Inc., a Delaware corporation ("Business Associate").

Whereas, Business Associate performs functions, activities or services for, or on behalf of Covered Entity and Business Associate creates, receives, maintains, or transmits Protected Health Information ("PHI"), including Electronic Protected Health Information ("EPHI"), in order to perform such functions, activities or services (referred to collectively as the "Services");

Whereas, the purpose of this BAA is to set forth the terms and conditions of disclosure of PHI by Covered Entity to Business Associate, to set forth the terms and conditions of Business Associate's use and disclosure of PHI, and to ensure the confidentiality, integrity and availability of EPHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity;

Whereas, it is the intent of Covered Entity and Business Associate that this BAA will meet the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"), the Privacy Rule, and the Security Rule, 45 C.F.R. Parts 160 and 164, and the Final HIPAA Omnibus Rule.

Now Therefore, in consideration of the mutual promises set forth in this BAA and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. Definitions. Unless otherwise specified in this BAA, all capitalized terms not otherwise defined shall have the meanings established in Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time, and/or in the American Recovery and Reinvestment Act of 2009 ("ARRA"). For purposes of clarification, the following terms shall have the definitions set forth below:

1.1 "Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164.

1.2 "Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as set forth in 45 C.F.R. Parts 160 and 164.

2. Business Associate Obligations. Business Associate may create, receive, maintain, or transmit from, or on behalf of, Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, PHI. Business Associate shall not Use or Disclose the PHI other than as permitted or required by this BAA or as Required by Law. Business Associate agrees not to Use or Disclose (or permit the Use or Disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were Used or Disclosed by Covered Entity in the same manner, except as provided in Sections 3 and 4 of this BAA. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.

3. Use of PHI. Business Associate may Use PHI as necessary (i) for performing Services on behalf of Covered Entity, (ii) for the proper management and administration of the Business Associate, and (iii) for carrying out Business Associate's legal responsibilities, provided in each case that such Uses are permitted under federal and state law. In addition, Business Associate may use PHI to create a de-identified data set, in accordance with the requirements of the Privacy Rule. PHI that has been de-identified will no longer be subject to the terms of this BAA.

4. Disclosure of PHI. Business Associate may Disclose PHI as necessary to perform Services on behalf of Covered Entity. In addition, Business Associate may Disclose PHI (i) for the proper management and administration of the Business Associate, and (ii) to carry out Business Associate's legal responsibilities, provided that either (a) the Disclosure is Required by Law or (b) the Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that the information will be held confidential and further Used and Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and such person agrees to immediately notify the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Business Associate will determine the amount of PHI necessary to accomplish the intended purpose of disclosure and will make reasonable efforts to limit the receipt, use and disclosure of PHI to the minimum necessary as required by the Privacy Laws.

5. Reports. Business Associate agrees to report to Covered Entity:

5.1 Any Use or Disclosure of PHI not authorized by this BAA within five (5) calendar days of the Business Associate becoming aware of such unauthorized Use or Disclosure;

5.2 Any Security Incident within five (5) calendar days of the Business Associate becoming aware of the Security Incident; and

5.3 Any Breach of Unsecured PHI. Each report of a Breach of Unsecured PHI Discovered by Business Associate, unless delayed for law enforcement purposes, shall be made without delay and in no case later than thirty (30) calendar days after Discovery of the Breach, and shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, Used, or Disclosed during such Breach and any other available information Covered Entity is required to include in notification to the affected Individual(s) under 45 C.F.R. § 164.404(c).

6. Safeguards. Business Associate will use appropriate safeguards and comply, where applicable, with 45 C.F.R 164 Subpart C with respect to EPHI, to prevent use or disclosure of the information other than as provided for by this BAA.

7. Subcontractors. Business Associate shall require Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate to agree in writing to the same restrictions and conditions that apply to the Business Associate under this BAA, including but not limited to, compliance with the applicable requirements of 45 C.F.R. Parts 160 and 164. Such agreement between Business Associate and the Subcontractor must be made in writing and must comply with the terms of this BAA and the requirements outlined in 45 C.F.R. § 164.504(e) and 164.314.

8. Individual Rights to Access and Amendment.

8.1 Access. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall permit an Individual to inspect or copy PHI contained in that Designated Record Set about the Individual in accordance with the Privacy Standards set forth in 45 C.F.R. § 164.524, as it may be amended from time to time, unless excepted or a basis for denial exists under 45 C.F.R. § 164.524, as determined by the Covered Entity. In the event a Business Associate uses or maintains an Electronic Health Record on behalf of Covered Entity then an Individual's right of access under 45 C.F.R. § 164.524 shall include the right to obtain a copy of the PHI in an electronic format and,

if the Individual chooses in a clear, conspicuous and specific manner, to direct the Business Associate to transmit such copy to any person designated by the Individual. Business Associate shall respond to any request from Covered Entity for access by an Individual within five (5) days of such request unless otherwise agreed to by Covered Entity. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost based fee may be charged for copying PHI or providing a summary of PHI in accordance with 45 C.F.R. § 164.524(c)(4), provided that any such fee relating to a copy or summary of PHI may not be greater than the labor, supplies, and postage costs incurred in response to the request for the copy or summary.

8.2 Amendment. Business Associate shall accommodate an Individual's right to amend PHI about the Individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 C.F.R. § 164.526, as it may be amended from time to time, unless excepted or a basis for denial exists under 45 C.F.R. § 164.526, as determined by the Covered Entity. Covered Entity shall determine whether a denial to an amendment request is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for amendment by an Individual and shall make any amendment requested by Covered Entity within ten (10) days of such request. Business Associate shall have a process in place for handling requests for amendments and for appending such requests to the Designated Record Set when required by 45 C.F.R. § 164.526.

9. Accounting of Disclosures.

9.1 General Accounting Provisions. Business Associate shall make available to Covered Entity in response to a request from an Individual, information required for an accounting of Disclosures of PHI with respect to the Individual, in accordance with 45 C.F.R. § 164.528, as it may be amended from time to time, unless an exception to such accounting exists under 45 C.F.R. § 164.528. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Covered Entity's request.

9.2 Fees for an Accounting. Any accounting provided under Section 9.1 must be provided without cost to the Individual or to Covered Entity 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 Business Associate informs the Covered Entity and the Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request.

10. Withdrawal of Consent or Authorization. If the Use or Disclosure of PHI in this BAA is based upon an Individual's specific consent or authorization for the Use or Disclosure of his or her PHI, and (i) the Individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the Use and Disclosure of any such Individual's PHI except to the extent it has relied on such Use or Disclosure, or where an exception under the Privacy Standards expressly applies.

11. Records and Audit. Business Associate shall make available to Covered Entity and to the Secretary or her agents, its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Privacy Standards and the Security Standards in a timely manner designated by Covered Entity or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests served upon Business Associate by or on behalf of any and all government authorities relating to PHI received from, or created or received by Business Associate on behalf of, Covered Entity.

12. Notice of Privacy Practices. Covered Entity shall provide to Business Associate its Notice of Privacy Practices ("Notice"), including any amendments to the Notice. Business Associate agrees that it will abide by any limitations set forth in the Notice, as it may be amended from time to time, of which it has knowledge. An amended Notice shall not affect permitted Uses and Disclosures on which Business Associate has relied prior to receipt of such Notice.

13. Compliance with Law. To the extent Business Associate is to carry out Covered Entity's obligation under the Privacy Standards, Business Associate shall comply with the requirements of the Privacy Standards that apply to Covered Entity in the performance of such obligation.

14. Prohibition of Sale of PHI and use of PHI for Marketing. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, and will not use or disclose PHI for fundraising and/or marketing purposes, except with prior written consent of Covered Entity and in accordance with applicable Privacy Laws.

15. Term and Termination.

15.1 This BAA shall remain in effect until all PHI received from, or created or received by, Business Associate on behalf of Covered Entity is returned to Covered Entity or destroyed in accordance with Section 15.4.

15.2 Upon either Party's knowledge of a material breach of this BAA by the other Party, the non-breaching Party must either:

i. Provide an opportunity for the breaching Party to cure the breach or end the violation, and if the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party, the non-breaching Party shall terminate this BAA and any underlying agreements that give rise to the business associate relationship described in this BAA ("Underlying Agreements"); or

ii. Immediately terminate this BAA and any Underlying Agreements.

15.3 This BAA shall terminate simultaneously without additional notice upon the termination of any Underlying Agreement related to the Services, or, if there is no Underlying Agreement, upon termination of the Services.

15.4 Upon termination of this BAA for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from, or created or received by Business Associate on behalf of, Covered Entity that is in the possession or control of Business Associate or its Subcontractors. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the terms in this BAA with respect to such PHI and shall comply with other applicable state or federal law.

16. Miscellaneous

16.1 Notice. All notices, requests, demands and other communications required or permitted to be given or made under this BAA shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery.

16.2 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Business Associate's obligations are to the Covered Entity only.

16.3 Successors and Assigns. This Agreement will inure to the benefit of, and be binding upon, the successors and assigns of the parties. However, this Agreement is not assignable by any party without the prior written consent of the other parties.

16.4 Counterparts. This Agreement may be executed in counterparts, by manual, electronic, or facsimile signature, each of which will be deemed an original and all of which together will constitute one and the same instrument.

16.5 Interpretation. Any ambiguity herein must be resolved in favor of a meaning that permits both Covered Entity and Business Associate to comply with Applicable Privacy Laws, consistent with the Terms of Services.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and made effective as of the date of execution.

WebPT, Inc.
Business Associate

Covered Entity

Signature: _____

Signature: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____