

WebPT Business Associate Agreement

This Business Associate Agreement (hereinafter referred to as "BAA"), is hereby entered into between Covered Entity ("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 PHI disclosure 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, 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.

3. Use of PHI.

3.1 Administrative and Other Duties. 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.

3.2 Data Aggregation. Business Associate may provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B) and to Use, Disclose, and combine PHI created or received on behalf of Covered Entity by Business Associate pursuant to this BAA with PHI received by Business Associate in its capacity as a business associate of other covered entities, to permit data analyses that relate to the Health Care Operations of the respective covered entities and/or Covered Entity.

3.3. De-Identified PHI. Business Associate may de-identify any and all PHI created or received by Business Associate under this BAA. PHI that has been de-identified within the meaning of 45 CFR § 164.514(b) is no longer PHI and may be used or disclosed by Business Associate for any lawful purpose.

4. Disclosure of PHI. Business Associate may Disclose PHI as necessary to perform Services on behalf of Covered Entity. Additionally, 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 he or she 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 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. Such report 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);

5.2 Any Security Incident. Any Security Incident within thirty (30) calendar days of the Business Associate becoming aware of such unauthorized Use or Disclosure. For Security Incidents that do not result in access to or a Use or Disclosure of EPHI in violation of this BAA or the Underlying Agreement (an “**Unsuccessful Security Incident**”), this Section 5.2 will be deemed as notice to Covered Entity that Business Associate periodically receives unsuccessful attempts for unauthorized access, Use, Disclosure, modification, or destruction of information or interference with the general operation of Business Associate’s information systems and the Services, including pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, and denial-of-service attacks, and, even if such events are defined as a Security Incident under the HIPAA Rules, Business Associate will not provide any further notice regarding such unsuccessful attempts. To the extent required by the Security Rule, Business Associate will record or otherwise log all Unsuccessful Security Incidents, will maintain such records for the period required under the Security Rule, and will, upon Covered Entity’s written request, provide a copy of any such records to Covered Entity.

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 or similar 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 Amend.

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 that 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—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 is not 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 of 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. At this time, the Individual must be 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, as long as 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 its 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 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, nor will it Use or Disclose PHI for fundraising and/or marketing purposes, except with the Covered Entity's prior written consent and in accordance with applicable Privacy Laws.

15. Term and Termination.

15.1. PHI Disposition. 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. Material Breach. Upon either Party's knowledge of a material breach of this BAA by the other Party, the non-breaching Party must (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. Underlying Agreement. 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. Effect of Termination. 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. If it is not feasible to return or destroy the information, 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, effective upon receipt or attempted delivery, and sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices to Business Associate shall be sent to:

WebPT, Inc.
111 West Monroe St., Suite 200
Phoenix, AZ 85003
Attention: Legal Department

Notices to Covered Entity shall be sent to the address provided by Covered Entity in the Underlying Agreement.

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

16.3 Successors and Assigns. This BAA will inure to the benefit of, and be binding upon, the successors and assigns of the parties. However, this BAA is not assignable by any party without the prior written consent of the other parties. However, either party may, without the written consent of the other, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its business related to this Agreement, or in the event of a merger, consolidation, change in control or similar transaction.

16.4 Counterparts. This BAA 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 the Underlying Agreements.

[SIGNATURE BLOCK ON SEPARATE PAGE]

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

WebPT, Inc. Business Associate	Covered Entity
Name: <u>Doug Shamah</u>	Name: _____
Signature:  <small>2BA355A97E63405</small>	Signature: _____
Title: <u>General Counsel</u>	Title: _____
Date: _____	Date: _____