

OrthoBanc, LLC Terms and Conditions

Background:

OrthoBanc, LLC (hereinafter known as “Company”) is in the business of performing certain back office services and functions for orthodontic and dental practices (hereinafter known as “Provider”) under the names OrthoBanc and DentalBanc, including (i) the performance of payment plan analyses for Patients (as such term is hereinafter defined) who wish to make periodic payments for services rendered by Provider and (ii) the automation of the collection of payments and fees process. Provider wishes to retain Company to perform such services and functions for Provider, and Company wishes to perform such services and functions, all on the terms and conditions set forth in this Agreement. For purposes of this Agreement, the term “*Responsible Party*” shall mean either a patient receiving dental services from Provider or (ii) the person or persons responsible for making payments to Provider on behalf of a person receiving dental services from Provider.

Agreement:

In consideration of the foregoing and the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services.

1.1 Basic Services.

1.1.1 Web Site. The services provided by Company under this Agreement (the “*Services*”) are to be facilitated via the Internet at Company’s web site (the “*Site*”) or through the use of webservices that provide an application programming interface (“*API*”) for integration of *Services* into certain practice management software systems. Access to the *Services* is controlled by usernames and passwords that Company will assign to Provider. Company will also provide detailed instructions on how to use the *Site*.

1.1.2 User Changes. Provider understands that the Main Contact listed in the User Setup and Delegation of Signing Authority Form, which is part of the Provider Onboarding Packet, will be permitted to authorize user changes for all of Provider’s staff members, with the exception of changes to that person’s own personal user account as well as the Provider’s user account. It is the responsibility of the Provider to notify Company in writing if the Main Contact changes or if Provider desires to make changes to the users or authorization levels.

1.1.3 eSign. Provider authorizes Company to debit the amount indicated on the Service Selection Form and this Outsourcing Services Agreement (OSA) for eSign from the banking account regularly used by Company to transact business with Provider. Billing will continue until canceled by Provider in writing.

Provider acknowledges and agrees that only the Responsible Party will electronically authorize any Provider documents distributed through the service.

1.1.4 Payment Plan Recommendations. Upon receipt of a request for *Services* transmitted from Provider via the *Site* indicating that the Credit Authorization Form was executed by the Responsible Party and received by Provider, Company shall (i) perform a payment plan analysis with respect to such Responsible Party by procuring a report on such Responsible Party from a credit reporting agency and (ii) recommend to Provider a plan for periodic payments to Provider by such Responsible Party.

1.1.5 Collection and Transfer of Recurring Payments. Provider shall have each Responsible Party for which Provider desires Company to administer a plan for recurring payments execute a Recurring Payment Plan in a form approved by Company, and Provider shall deliver such executed forms to Company. Upon receipt of a Recurring Payment Plan form executed by a Responsible Party, Company will collect payments from such Responsible Party via ACH, bankcard or credit card processing as set forth on the Recurring Payment Plan Form. All Responsible Party payments collected by Company shall be held for at least two (2) days before being transferred to Provider. A reconciliation statement shall be provided to Provider in connection with each transfer to Provider of Responsible Party funds. NOTE: In performing these functions, Company is bound by the rules and guidelines of the National Automated Clearing House Association (NACHA). Changes in the NACHA Rules may require changes in Company’s procedures. Provider will be informed of such changes prior to implementation.

Provider acknowledges and agrees that only the Responsible Party will electronically authorize any required documents such as, but not limited to, Recurring Progress Payment Plans (RPPP) and Change Request Forms (CRF).

1.1.6 Insufficient Responsible Party Funds. In the event that Company's efforts to collect Responsible Party funds are unsuccessful due to insufficient funds in Responsible Party's accounts, closed Responsible Party accounts, disputed ACH or bankcard transactions, stop payments or any other reason, Company will promptly notify Provider and will attempt to collect the payment again. If such second attempt fails, Company will notify Provider of such failure. Company will manage collection of the missed payment(s) and continue collection of future recurring payments on accounts where Responsible Party payment method is valid. In cases where the Responsible Party payment method is no longer valid, Provider and Company will attempt to obtain new payment method information from Responsible Party. Once Company receives notification, Company will reinstate the collection of failed and recurring payments on such account.

1.1.7 Disputed Transactions/Errors. If, after Company has transferred a Responsible Party's payment to Provider, Company is required to transfer an amount equal to such payment back to the Responsible Party due to a disputed credit card transaction, a disputed ACH transaction, an error in transfer of funds or otherwise, Company may deduct any amount which is disputed or in error from the next following transfer of funds to Provider's account.

1.1.8 Telephonic Support. Company will provide telephonic support to Provider during Company's normal business hours (as listed on the Company Website) to answer questions and provide assistance in connection with the provision of the Services.

1.1.9 OrthoBanc Integration Authorization. For practices using Practice Management Software (PMS) that is integrated with Company, Company is authorized by Provider to access data from the Practice's database, including but not limited to, patient demographics, scheduling information, treatment information and financial information. Provider will need to notify Company in writing if provider desires to revoke this authorization.

1.1.10 Additional Services. The parties may agree from time to time for Company to perform additional services and functions. A description of any such additional services, and the fees relating thereto, shall be provided on the Service Selection Form, the Outsourcing Services Agreement (OSA), and/or attached to this Agreement as an addendum hereto and signed by each party. The performance of any such additional services shall be governed by this Agreement. Services outside the scope of this Agreement will be provided pursuant to a separate agreement.

1.1.10.1 Outsourcing Services Agreement Addendums / Additional Requirements. Some of Company's services require documentation in addition to the OSA and/or the Provider Onboarding Packet. Any additional information requested by Company from the Provider are necessary to complete setup of selected services. Provider acknowledges that final account setup is subject to verification of information and receipt of additional documents listed in the OSA or as required to meet compliance regulations. Any questions about required documents should be directed to Company.

1.2 Expanded Service Offerings.

1.2.1 AccepTx Pro. Company does not guarantee or warrant the suitability of AccepTx Pro for the Provider's specific needs or the accuracy of calculations made by the program. Provider understands and agrees that Company is not responsible for calculation errors that occur as a result of utilization of the AccepTx Pro Smile Adjusters™ other than to correct these issues when they are brought to Company's attention.

1.2.1.1 AccepTx Pro Service. AccepTx Pro service will auto-renew on a month-to-month basis. Should the Provider wish to cancel their AccepTx Pro service, a written notice will be required.

1.2.1.2 AccepTx Pro Forms. Provider understands that any forms converted or provided by Company should be reviewed by the Provider for suitability and accuracy. Company does not provide legal advice and makes no claims that our forms meet federal laws or those governing your state. Provider understands that an attorney should be consulted if there are concerns about legal compliance and suitability of the forms that will be used by the practice.

1.2.2 iMaxx Insurance Optimizer. Company does not guarantee or warrant the suitability of iMaxx for the Provider's specific needs or the accuracy of insurance benefit calculations made by the program. Provider understands and agrees that Company is not responsible for calculation errors that occur as a result of utilization of the iMaxx application other than to correct these issues when they are brought to Company's attention, and that actual insurance benefits may vary from the calculations at the insurance company's discretion.

1.2.2.1 iMaxx Service. iMaxx service will auto-renew on a month-to-month basis. Should the Provider wish to cancel their iMaxx Pro service, a written notice will be required.

1.2.2.2 iMaxx Estimated Insurance Calculations. Provider understands that the actual benefits paid by the insurance company may vary from the calculations provided by iMaxx. Provider further agrees that (i) Company is not responsible for the difference between the estimate and the total amount insurance company pays toward patient bill; and (ii) it is the responsibility of the Provider to collect any additional balance due from the Responsible Party or to reimburse the Responsible Party in the event insurance company pays more than the iMaxx estimate.

1.2.2.3 iMaxx Forms. Provider understands that any forms converted or provided by Company should be reviewed by the Provider for suitability and accuracy. Company does not provide legal advice and makes no claims that our forms meet federal laws or those governing your state. Provider understands that an attorney should be consulted if there are concerns about legal compliance and suitability of the forms that will be used by the practice.

1.2.3 Zuelke Automated Credit Coach (ZACC).

1.2.3.1 Grant of License. Company grants Provider a non-exclusive, personal, non-transferable license to use Credit Recommendations (OCR or ZACC) and any associated software (collectively the "Licensed Product") pursuant to the terms herein and applicable law. This license only applies to and the Licensed Product may only be used by Provider and Provider's authorized employees. Provider is responsible for all computer and communications equipment, telephone or internet access charges or other expenses necessary to utilize the Licensed Product. Company reserves the right to change or modify the Licensed Product from time-to-time and by continuing to use the Licensed Product, Provider accepts all such changes. If any changes are not acceptable, Provider may terminate this service on 60 days written notice and agrees hereby to cease utilizing such service.

1.2.3.2 Credit Reports. Provider acknowledges and agrees that it must have a permissible purpose for obtaining consumer reports pursuant to the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) ("FCRA"). Provider certifies its permissible purpose as:

- In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer; or
- For a legitimate business need in connection with a business transaction that is initiated by the consumer.

Provider certifies that it shall use the consumer reports: (a) solely for Provider's certified use(s); and (b) solely for Provider's exclusive one-time use. Provider shall not request, obtain or use consumer reports for any other purpose including, but not limited to, for the purpose of selling, leasing, renting or otherwise providing information obtained under this Agreement to any other party, whether alone, in conjunction with Provider's own data, or otherwise in any service which is derived from the consumer reports obtained through Company. The consumer reports shall be requested by and disclosed by Provider only to Provider's designated and authorized employees having a need to know and only to the extent necessary to enable Provider to use the consumer reports in accordance with this Agreement. Provider shall ensure that such designated and authorized employees shall not attempt to obtain any consumer reports on themselves, associates, or any other person except in the exercise of their official duties. Provider shall indemnify, defend, and hold harmless Company against any claims or expenses (including attorney fees) arising out of a violation of any law applicable to Provider's use of the Licensed Product.

Provider will maintain copies of all written consumer authorizations for a minimum of five (5) years from the date of inquiry.

THE FCRA PROVIDES THAT ANY PERSON WHO KNOWINGLY AND WILLFULLY OBTAINS INFORMATION ON A CONSUMER FROM A CONSUMER REPORTING AGENCY UNDER FALSE PRETENSES SHALL BE FINED UNDER TITLE 18 OF THE UNITED STATES CODE OR IMPRISONED NOT MORE THAN TWO YEARS, OR BOTH.

Provider acknowledges it must keep consumer report information in strict confidence, and not disclose it to any third parties; provided, however, that Provider may, but is not required to, disclose the report to the subject of the report only in connection with an adverse action based on the report. Moreover, unless otherwise explicitly authorized in an agreement between Company and Provider for credit scores obtained from TransUnion, or as explicitly otherwise authorized in advance and in writing by TransUnion through

Company, Provider shall not disclose to consumers or any third-party, any or all such scores provided under such agreement, unless clearly required by law.

In the event of Provider's violation of this Agreement, the FCRA, or a change in existing law that would cause this Agreement to become illegal, Company may, upon its election, discontinue providing this service to the Provider and cancel the Agreement immediately.

Provider acknowledges that services it has subscribed to receive hereunder must be used in accordance with the Fair Credit Reporting Act, 15, U.S.C. 1681 et. seq. (the "FCRA") and any state law counterparts including but not limited to the Vermont Fair Credit Reporting Statute, 9 V.S.A. § 2480e (1999) (the "VFCRA"). Provider acknowledges receipt of the Notice to Users of Consumer Reports, provided as Exhibit A, and agrees to review and comply with the provisions therein. In connection with Provider's continued use of the Licensed Product in relation to Vermont consumers, Provider hereby certifies that (i) it will comply with applicable provisions under Vermont law, (ii) it will order information services relating to Vermont residents that are credit reports as defined by the VFCRA, only after Provider has received prior consumer consent in accordance with VFCRA § 2480e and applicable Vermont Rules, and (iii) a copy of VFCRA § 2480e and applicable Vermont Rules, provided as Exhibit B.

1.2.3.3 Adverse Action Notices. The Licensed Product includes the ability to print Adverse Action Notices from Company's website. Provider hereby agrees to the following conditions of use as to this feature: ZACC users must create their own letter.

- Provider understands that Company will not store a copy of the individual Adverse Action Notices printed from Company's website and that Provider shall be responsible for retaining copies of Adverse Action Notices.
- Provider understands that Company recommends that Provider consult with its own legal counsel regarding the language contained in the Adverse Action Notices.
- Provider assumes all responsibility for ensuring that the language of the Adverse Action Notices complies with all federal, state, and local laws.

1.2.3.4 Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPANY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED PRODUCT WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

1.2.3.5 Limitation on Liability. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, SHALL COMPANY OR ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS BE LIABLE TO PROVIDER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS EVEN IF COMPANY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, FURTHER, IN NO EVENT SHALL THE TOTAL LIABILITY OF COMPANY EXCEED THE TOTAL OF FEES PAID TO COMPANY IN THE PRECEDING TWELVE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT WILL COMPANY BE LIABLE TO PROVIDER FOR ANY INABILITY TO COLLECT FROM RESPONSIBLE PARTY ANY AMOUNTS OWED BY SUCH RESPONSIBLE PARTY TO PROVIDER DUE TO CIRCUMSTANCES OUT OF COMPANY'S CONTROL.

1.2.3.6 ZACC Ownership/Rights. Provider acknowledges that certain aspects of the Licensed Product are owned by Zuelke & Associates, Inc. ("Zuelke"). Zuelke retains all applicable copyrights, trade secrets, patent rights, if any, and other intellectual property ownership or rights in said aspects, except the right of use licensed to Provider herein and any rights provided to Company under its separate agreement with Zuelke. Zuelke also owns and retains all trademarks, service marks, trade names and any other names or marks used to identify Zuelke and/or any of its components described above

1.2.3.7 Termination. Provider acknowledges that this Agreement will terminate if the separate agreement between Zuelke and Company terminates. Although Zuelke is not a party to this Agreement, and Provider has no rights against Zuelke arising under this Agreement, the parties agree that Zuelke is an intended third-party beneficiary of this Agreement and the terms herein.

2.1.1 Credit Recommendations. Provider authorizes the verification of the information provided on the OSA. If Provider is a sole proprietorship or partnership, Provider authorizes Company to obtain a credit report as required by TransUnion. In addition, Provider authorizes billing of their EFT account the one-time implementation fee, unless previously paid, and billing of every OCR or ZACC Credit Recommendation pulled by Provider or a member of their staff from the checking account regularly used by Company to transact business with their practice.

Provider agrees that any time a credit recommendation is requested, the Responsible Party will have prior knowledge of the request. Company and ZACC Recommendation Services do not require a signature from the Responsible Party, but it is desired. Provider agrees that any time an offer is made to the Responsible Party that, based on the credit recommendation, is less favorable than the standard offer, the Provider will provide an Adverse Action Letter to the Responsible Party. Adverse Action Letters can be automatically generated through the OrthoBanc Credit Recommendations. ZACC users will need to use the Risk-Based Pricing Notice provided on the Company websites or will need to create their own Adverse Action Letter.

2.1.2 Rules Specific to Credit Card Merchants.

2.1.2.1 [American Express](#)

2.1.2.2 [Visa](#)

2.1.2.3 [MasterCard](#)

2.1.2.4 Discover has no public rules available.

2. Compliance

2.1. NACHA Compliance. Company is committed to complying with all the rules of NACHA. In performing certain of its duties under this contract, Company is acting on behalf of the Provider who is defined as an “Originator” by NACHA. As such, the Provider, along with Company, agrees to comply with all present and future NACHA Rules. Currently these rules require that:

- The Originator will not originate ACH entries which violate the laws of the United States.
- The processing bank (ODFI – as defined by NACHA) has the right to suspend or terminate any and all activity violating NACHA Rules.
- The processing bank (ODFI) or the acting third-party (Company) may audit the Provider’s compliance with the NACHA Rules.

2.2 PCI-DSS Compliance. Company is committed to complying with all the rules of the Payment Card Industry Data Security Standards (PCI-DSS). In performing certain duties under this contract, Company, along with the Provider, agree to comply with all present and future PCI-DSS Regulations. In support of these compliance requirements, Provider agrees to provide evidence of their compliance to Company through (i) annual completion of a Self-Assessment Questionnaire (SAQ); and (ii) quarterly compliance scans. Company currently provides a third-party service to assist Providers with meeting their PCI-DSS compliance requirements. The fee for this service will be included in fees paid to the Company by Provider. To obtain a copy of the Company Report on Compliance (ROC) / Attestation of Compliance (AOC), log into the Company website and locate this under Resources, Security, and then PCI Compliance.

2.3 HIPAA Compliance. Company is committed to complying with all the rules regarding the Health Insurance Portability and Accounting Act (“HIPAA”). In performing certain duties under this contract, Company, along with the Provider, agrees to comply with all present and future HIPAA regulations.

2.3.1 Definitions.

- “HIPAA” shall mean Section 262 of the Health Insurance Portability and Accountability Act, P.L. 104-191 (“HIPAA”) which governs the use and transmission of individually identifiable health information.
- “Legal Requirement” shall mean any law or regulation affecting the use or disclosure of Protected Health Information.
- “Protected Health Information” shall mean any Protected Health Information as defined in HIPAA or any similar information obtained from individuals as a result of the Customer providing products or services.

2.3.2 Security and Confidentiality: Company and Provider acknowledge that Protected Health Information requires special safeguarding and agree to abide by the laws of your company, state, and HIPAA regarding the protection and disclosure of Protected Health Information contained in the Site.

2.3.3 Safeguards: Company and Provider agree that it the responsibility of each party to implement reasonable and appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity and availability of all Protected Health Information and any and all other confidential information accessible on or through the Site.

2.3.4 Limitations: Company agrees that the use and/or access to all Protected Health Information will be restricted to those required as part of the normal operation of the Site.

2.4 UCC Article 4A Compliance. In accordance with Article 4A of the Uniform Commercial Code (UCC) which covers certain funds transfers, including Automated Clearing House (ACH) credit transactions, Company is required to provide the following disclosures:

2.4.1 Provisional Payment to Receivers.

Credit given by Company to Provider with respect to an ACH credit entry is provisional until Company receives final settlement for such entry through a Federal Reserve Bank. If Company does not receive such final settlement, Provider will be notified and hereby agrees that Company is entitled to a refund of the amount credited to Provider in connection with such entry, and the party making payment to Provider via such entry (i.e. the originator of the entry) shall not be deemed to have paid Provider in the amount of such entry.

2.4.2 Notice of Receipt to Receivers.

Under the operating rules of NACHA, which are applicable to ACH transactions involving Provider's account, Company is not required to give next day notice to Provider of receipt of an ACH item and will not do so. However, Company will continue to notify Provider of the receipt of payments in the periodic statements sent to Provider.

2.4.3 Choice of Law.

Company may accept on Provider's behalf payments to Provider's account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and Provider's rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of Tennessee as provided by the operating rules of NACHA, which are applicable to ACH transactions involving your account.

3. **Third-Party Services**. As need arises, Company may require the assistance of third-party affiliates. In cases such as these, Company will serve in a representative function for the Provider's practice in maintaining contractual agreements with these affiliates.

4. **Control of Services**. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Company. Company may, in its sole discretion take the following actions: (i) change locations where its work functions are performed; (ii) perform its obligations through its subsidiaries or affiliates, or through the use of Company-selected independent subcontractors, *provided, however*, that Company shall not be relieved of its obligations under this Agreement by the use of such subsidiaries, affiliates or subcontractors; (iii) modify or replace work processes or technology relating to the Services; (iv) from time to time initiate changes in order to improve, modify or migrate the Services; and (v) from time to time consolidate or transfer any or all of the Services being provided hereunder into any facility or facilities selected by Company and relocate the personnel, equipment and other resources used in providing the Services.

5. **Right to Perform Services for Others**. Company may, in its sole discretion, perform services similar to the Services for other Company clients, and this Agreement does not prevent Company from using any of its personnel, equipment, facilities or technology for such purposes.

6. **Confidentiality of Patient Information**.

6.1. Restrictions on Disclosure. The information transmitted from Provider to Company hereunder, including all personal, health and financial information with regard to Responsible Party, shall be held by Company in confidence, shall be used by Company and its employees and agents only for the purposes set forth in this Agreement and shall not be disclosed without the prior written consent of Provider and Responsible Party or unless disclosure is required by law. The information transmitted from Company to Provider hereunder, including all personal and financial information with regard to Responsible Party, shall be held by Provider in confidence, shall be used by Provider and his/her employees and agents only for the

purposes set forth in this Agreement, and shall not be disclosed without the prior written consent of Company and Responsible Party unless disclosure is required by law.

6.2. Business Associate Agreement. Provider understands that its relationship with Company may constitute a "Business Associate" relationship as that term is used in the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (HHS) and that Company may be entering into one or more contractual relationships with Business Associates who will or may have access to the information provided by Provider. Provider consents to Company and each of its Business Associates having such access as its agent, provided that Company and each of its Business Associates agree that, at such time as it is required by law, they will enter into a Business Associate Agreement and, if appropriate, a Chain of Trust Agreement with Provider or, if the person is Company's Business Associate, with Company, in whatever form appropriate to comply with regulations addressing the privacy and security of patient health information that may be promulgated in final form by HHS.

7. **Proprietary Rights.** Company retains all right, title, and interest, including any and all intellectual property rights therein, in and to any and all Company Technology (as hereinafter defined). Company's use on Provider's behalf of any pre-existing software and documentation owned by and/or licensed from a third-party by Company shall be governed by the then current written license agreement required by such third-party. For purposes hereof, "*Company Technology*" means Company's (or its licensors') proprietary information, data, technology, methods and methodologies, processes, know-how, algorithms, tools, development tools, templates, software code, documentation, tools, software and interfaces, trade secrets, works of authorship and other proprietary materials, and all patented or patentable work that are owned, developed, or licensed by Company (or its licensors) and used by Company in the performance of the Services, including, without limitation, any and all Innovations (as hereinafter defined). For purpose hereof, "*Innovations*" means any and all inventions, developments, innovations, findings, discoveries, formulate and trade secrets, created or made by Company in the course of providing the Services, including all patents, copyrights, trademarks, trade secrets or know-how embodied therein or otherwise pertaining thereto.

8. **Noncompetition.** Provider agrees with Company that for a period commencing on the date of this Agreement and ending two (2) years after the termination of this Agreement, Provider and its affiliates will not establish, own, operate, manage or control any business that (i) is engaged in the business of providing services substantially similar to the Services and (ii) competes with the business of Company. In the event that any provisions in this section shall be determined to be unenforceable, it shall be interpreted to extend only over the maximum period of time, geographic area or range of activities as to which it may be enforceable. Provider acknowledges that the breach of this Section 8 may give rise to irreparable injury to Company. Accordingly, in the event that Provider breaches, or threatens to breach the provisions of this Section 8, Company shall be entitled to injunctive or other equitable relief.

9. **Warranties and Representations.**

9.1. General Representations and Warranties. Each party represents and warrants to the other party that: (i) it has all requisite power and authority to execute this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance of this Agreement have been duly authorized; (iii) it has obtained all permits, rights and licenses required for the transactions contemplated by this Agreement; and (iv) this Agreement is a valid and binding agreement enforceable in accordance with its terms. Additionally, each party agrees to comply with all federal, state and local laws and regulations applicable to the transactions contemplated by this Agreement and each party agrees to comply with all future regulatory changes. (NOTE: Failure to provide Company with accurate and timely tax information may result in a withholding of merchant funding per IRS Regulation 6050W.)

9.2. Representations and Warranties of Company. Company expressly warrants that: (i) the Services will be performed in a professional and workmanlike manner by qualified and properly trained personnel; (ii) Company shall comply with all applicable federal, state, and local laws and regulations and has obtained all applicable permits, rights, and licenses; and (iii) Company shall perform its responsibilities under this Agreement in a manner that does not infringe on the intellectual property rights of any person.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Indemnification.**

10.1. Indemnification by Provider. Provider shall indemnify, defend and hold harmless Company, each officer, director, employee or agent thereof, their respective controlling entities, and their respective estates, successors or assigns, from and against any and all claims, losses, damages, liabilities or expenses (including, without limitation, settlement costs and any

legal or other expenses for investigating or defending any actions or threatened actions) reasonably incurred by any of them as a result of: (i) the untruth, inaccuracy or breach of any representation or warranty made by Provider in this Agreement; or (ii) the nonfulfillment or breach of any covenant, agreement or obligation of Provider contained in this Agreement.

10.2. Indemnification by Company. Company shall indemnify, defend and hold harmless Provider and his or her estate, successors or assigns from and against any and all claims, losses, damages, liabilities or expenses (including, without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) reasonably incurred by any of them as a result of: (i) the untruth, inaccuracy or breach of any representation or warranty made by Company in this Agreement; or (ii) the nonfulfillment or breach of any covenant, agreement or obligation of Company contained in this Agreement.

11. **Limitation on Liability.**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WHETHER IN TORT, CONTRACT, OR OTHERWISE SHALL COMPANY OR ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS BE LIABLE TO PROVIDER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS EVEN IF COMPANY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE FEE PAID TO COMPANY FOR THE SERVICES. IN NO EVENT SHALL COMPANY BE LIABLE TO PROVIDER FOR AN INABILITY BY COMPANY TO COLLECT FROM PATIENTS ANY AMOUNTS OWED BY SUCH PATIENTS TO PROVIDER DUE TO CIRCUMSTANCES OUT OF COMPANY'S CONTROL.

12. **Miscellaneous.**

12.1 Severability. If any provision of this Agreement should be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and such provision shall be deemed restated to reflect the original intention of the parties as nearly as possible in accordance with applicable law.

12.2 Survival. The provisions of Sections 1.2.2.4-6, 5, 6, 7, 8, 10, 11, and 12 shall survive the termination of this Agreement for any reason.

12.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee, without giving effect to the conflicts of laws provisions thereof. The parties, by their execution hereof, irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Chattanooga, Tennessee for the purpose of any action, claim, cause of action or suit, inquiry proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof.

12.4 Jury Trial Waiver.

EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY WAIVES AND AGREES NOT TO REQUEST A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OR DEALINGS BETWEEN THE PARTIES.

12.5 Notices. Whenever one party is required or permitted to give notice to the other, such notice shall be deemed given: when delivered by hand; one day after being given to an express courier with a reliable system for tracking delivery; when telecopied or faxed and receipt confirmed; or three (3) days after the day of mailing when mailed through United States mail, registered or certified mail, return receipt requested, postage prepaid. The addresses for delivery of notices are set forth on the signature page hereto.

12.6 No Third-Party Beneficiaries. This Agreement is entered into solely for the respective benefit of the parties and their respective successors and assigns, and nothing in this Agreement will be construed as giving any entity other than the parties to this Agreement, persons and entities expressly indemnified hereunder and their respective successors and permitted assigns, any right, remedy or claim under this Agreement.

12.7 Relationship of the Parties. The parties shall be deemed independent contractors with respect to all performance rendered under the Contract Documents. Neither Company nor its employees shall be considered employees or agents of Provider for any purpose. Neither party shall have the authority to bind or make commitments on behalf of the other party for any purpose, and neither shall hold itself out as having such authority. Company shall have sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like of Company personnel.

12.8 Force Majeure. Neither party shall be responsible for any delay or failure in performance resulting from acts beyond their control including but not be limited to an act of God; an act of war, sabotage or terrorism; a riot or other civil disturbance; outages of electrical, telecommunications or computer server services provided by third parties; an epidemic, fire, flood, extreme weather condition, or other disaster; an act of government; delays in transit or delivery; or labor shortage, labor unrest, strike or lockout; provided that, in order to be excused from delay or failure to perform, such party must act diligently and reasonably to remedy the cause of such delay or failure.

12.9 Entire Agreement. This Agreement constitutes the entire and final and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, communications, negotiations and agreements, written or oral, with respect to the subject matter hereof. There are no representations, warranties, understandings, or agreements relating to the subject matter hereof which are not fully expressed in this Agreement. No amendment, modification, waiver, or discharge of this Agreement shall be valid unless in writing and signed by an authorized representative of the party against whom such amendment, waiver or discharge is sought to be enforced. This provision may not be orally waived.

12.10 Assignment. Provider shall not assign or otherwise transfer its rights and/or obligations under this Agreement without the written consent of Company.

12.11 Counterparts. This Agreement may be executed in counterparts, including counterpart transmitted by facsimile, each of which shall be deemed an original, and all such counterparts shall constitute one and the same agreement.

12.12 Headings. The section and subsection headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.