

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective on \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as “Covered Entity,” and Emily Corporation, dba DDP Medical Supply, hereinafter referred to as “Business Associate,” (individually, a “Party” and collectively, the “Parties”).

**WHEREAS**, Business Associate performs functions, activities, or services for, or on behalf of Covered Entity and may have access to Health Information (as defined below) and (“HIPAA”) direct the Department of Health and Human Services to develop standards to protect the security, confidentiality, and integrity of health information; and

**WHEREAS**, the Secretary of Health and Human Services has issued regulations under 45 CFR Parts 160 and 164 (the “HIPAA Security and Privacy Rule”); and

**WHEREAS**, the Parties have entered into a Services Agreement and pursuant to the Services Agreement the Parties have agreed that Business Associate will provide certain services to Covered Entity and Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Security and Privacy Rule; and

**WHEREAS**, HIPAA requires Covered Entity to enter into a “Business Associate Agreement” with Business Associate to provide for the protection of the privacy and security of Health Information, and HIPAA prohibits the disclosure to or use of Health Information by Business Associate if such a contract is not in place; and

**THEREFORE**, in consideration of the Parties’ continuing obligations under the Services Agreement, compliance with the HIPAA Security and Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

### DEFINITIONS

The terms in this Agreement shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control.

The term “Health Information” means any information, whether oral or recorded in any form or medium, that: (a) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (b) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Business Associate acknowledges and agrees that all Health Information that is created or received by Covered Entity and disclosed or made available in **any** form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

## **BUSINESS ASSOCIATE AGREEMENT**

### **CONFIDENTIALITY**

Business Associate agrees to use or disclose any Health Information solely for providing the services as set forth in the Services Agreement between the Parties. Upon termination of this Agreement or the Services Agreement, Business Associate will return or destroy all Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. If, however, such return or destruction is not feasible (e.g., Health Information is necessary to administer product warranties), Business Associate will 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 not feasible.

Business Associate shall undertake to require any agents or subcontractor to whom it provides Health Information to agree to the same restrictions and conditions that apply to Business Associate with respect to the Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Health Information: (i) if necessary, for the proper management and administration of Business Associate or to perform the legal responsibilities of Business Associate, provided that the disclosure is required by law or Business Associate 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; or (ii) for data aggregation services. For purposes of this Agreement, the term data aggregation services mean the combining of Health Information from a plurality of Covered Entities to permit analysis of business operations.

Business Associate will implement appropriate safeguards to prevent use or disclosure of Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity.

Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Health Information available to the Secretary of the U.S. Department of Health and Human Services ("Secretary"), for purposes of determining Covered Entity's compliance with the Privacy Regulations.

Business Associate shall report to Covered Entity each use or disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors that is not specifically permitted by this Agreement of which Business Associate becomes aware. The initial report shall be made by telephone call to the Covered Entity within seventy-two (72) hours from the time the Business Associate becomes aware of the non-permitted Use or Disclosure, followed by a written report to covered Entity no later than twenty (20) days from the date the Business Associate becomes aware of the non-permitted Use or Disclosure.

## **BUSINESS ASSOCIATE AGREEMENT**

Prior to Covered Entity disclosing any HEALTH INFORMATION to Business Associate, Covered Entity shall have executed by the individual an Authorization in the form of Attachment A. The Authorization shall be maintained in Covered Entity's files and shall be provided to Business Entity immediately upon request

### **ACCESS TO HEALTH INFORMATION**

Business Associate agrees to make available Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. Business Associate agrees to make Health Information available for amendment and incorporate any amendments to Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule.

### **TERMINATION**

Upon Covered Entity's knowledge of a material breach of this Agreement by the Business Associate, Covered Entity shall either: (a) notify Business Associate of the breach in writing, and provide an opportunity to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity shall have the right to immediately terminate this Agreement and the Services Agreement(s) upon written notice to Business Associate; (b) upon written notice to Business Associate, immediately terminate this Agreement and the Underlying Agreement(s) if Covered Entity determines that such breach cannot be cured; or (c) if Covered Entity determines that neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

### **INDEMNITY**

Each Party shall indemnify, defend and hold harmless ("Indemnifying Party") the other and its agents, officers, directors, employees, successors and assigns, and each of them ("Indemnified Parties"), from and against any and all claims, suits, actions and proceedings, from or against any and all liabilities, judgments, losses, damages, costs, charges, and expenses of whatever nature or character resulting from, arising out of or in connection with any breach of this Agreement by the Indemnifying Party.

If any third party shall notify any Indemnified Party of any matter which may give rise to a claim for indemnification ("Third Party Claim"), the Indemnified Party shall promptly notify the Indemnifying Party thereof provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnified Party from any obligation hereunder, unless (and then solely to the extent) the Indemnifying Party is thereby prejudiced.

The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with the counsel of the Indemnifying Party's choice so long as the Indemnifying Party notifies the Indemnified Party within thirty (30) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party to the fullest extent provided by the provisions of this paragraph.

## **BUSINESS ASSOCIATE AGREEMENT**

### **MISCELLANEOUS PROVISIONS**

**Survival of Agreement:** The obligations of Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Services Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

**Severability:** If any provision or clause of this Agreement is found to be null or unenforceable, the Agreement will be construed as a whole to effect as closely as practicable the original intent of the parties; however, if for good cause, either party would not have entered into the Agreement knowing the interpretation of the Agreement resulting from the foregoing, the Agreement itself shall be null.

**Prior Agreements and Merger:** This Agreement supersedes and terminates all prior agreements (with the exception of the Services Agreement), whether written or oral, to which the Parties or any of them are also parties concerning its subject matter, and as of the execution of this Agreement, none of such other agreements shall any longer have any force or effect. This Agreement and any Services Agreement previously executed between the Parties contains the entire understanding of the Parties with respect to the subject matter of this Agreement, and the terms of this Agreement are contractual and not a mere recital.

**Modification:** No addition or modification to this Agreement shall be valid unless made in writing and signed by both parties.

No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

**Assignment:** Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party.

**Relationship between Parties:** None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

**Execution of Agreement:** This Agreement may be executed in one or more counterparts, and each executed counterpart shall be considered an original of this Agreement. In the event this Agreement as signed by a Party is delivered to another Party via facsimile, the transmitting Party intends to be contractually bound by the facsimile signature(s) hereon.

**BUSINESS ASSOCIATE AGREEMENT**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

\_\_\_\_\_

BUSINESS ASSOCIATE:

EMILY CORPORATION  
dba DDP MEDICAL SUPPLY

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name: Brian T. O'Neill

Title: \_\_\_\_\_

Title: Vice President of Sales