

**Master Services Agreement**

AIUM Accreditation Application Submittal #:

This Master Services Agreement (hereinafter referred to as the "**MSA**"), made this       (day) of       (month),       (year) (“**Effective Date**”) is by and between       (practice name) (“**Practice**”), having its principal place of business at      (practice address) and the American Institute of Ultrasound in Medicine (“**AIUM**”), located at 14750 Sweitzer Lane, Suite 100, Laurel, MD 20707.

**WHEREAS**, AIUM provides accreditation to medical practices for the performance of ultrasound services in connection with the provision of medical services; and

**WHEREAS**, Practice in good standing specializing in the provision of ultrasound services,

**WHEREAS**, AIUM has adopted standards, which may be modified from time to time, for the accreditation of medical practices for the performance of ultrasound services in connection with the provision of medical services of the type performed by the Practice; and

**WHEREAS**, the Practice desires to obtain accreditation by AIUM for the performance of such ultrasound services in accordance with AIUM’s current standards.

In consideration of the mutual promises contained in this Agreement, Practice and AIUM agree that AIUM accredit Practice for the performance of ultrasound services in accordance with all of the following:

## **Agreement, Scope of Services.**

Agreement. This MSA and any Appendices, each fully incorporated herein, together comprise the complete agreement between the parties (the "**Agreement**").

Basic Services. AIUM shall evaluate and assess the ultrasound services of the Practice and grant AIUM accreditation to Practice if AIUM determines, in its sole discretion, that Practice meets AIUM’s most recent standards of accreditation for the performance of such ultrasound services, which may be revised from time to time (the “Services”). Practice understands that such accreditation shall be valid only for a period of 3 years (the “Accreditation Period”) and that the Practice may apply for renewal of its accreditation to avoid a lapse in accredited status. During the Accreditation Period, Practice shall observe all standards for accredited practices, including such rules as the AIUM may from time to time establish. Failure to observe the standards or rules may result in the suspension or revocation of accreditation in the sole and absolute discretion of the AIUM.

On-site, Remote, or Virtual Audit. Notwithstanding any provision of this Agreement to the contrary, AIUM shall have the right at all reasonable times and upon reasonable notice to Practice to conduct an on-site, remote, or virtual audit (“Audit”) of the Practice for quality assurance relating to the equipment and processes being accredited hereunder, including image review. The time and date of the inspection shall be mutually agreed upon by Practice and the AIUM. In the event the AIUM determines, in its sole discretion that an on-site Audit is appropriate, Practice shall pay a non-refundable $500 administrative fee. In addition, Practice shall reimburse all reasonable expenses incurred by AIUM in conducting the on-site Audit that are agreed upon in advance, including, but not limited to transportation, lodging, and meals. If an Audit is requested by AIUM, the Practice shall provide AIUM with all of the information, documents, and materials reasonably necessary or appropriate for the Audit within one month from the date of AIUM’s request. The Practice understands that providing any false or misleading information or data shall result in the revocation of accreditation. AIUM shall bear all reasonable expenses of the Audit, however, AIUM shall not reimburse any costs or expenses of any kind that the Practice incurs in responding to a remote or virtual audit request under this paragraph.

Participating Practices. The Practice may permit subsidiary or affiliated entities to also seek services similar to the Services under this Agreement. To do so, each such subsidiary or affiliated entity must complete and submit a Participation Agreement attached hereto as Appendix A to AIUM for its approval. Such Participation Agreement may be subject to additional fees hereunder or under the applicable SOW.

## **Ownership of Accreditation and Practice Changes.**

In the event accreditation is granted under this Agreement, the entity that owns the right to this accreditation is the corporation, partnership or business that owns and operates the Practice.       (organization name) operates the Practice and its principal place of business is at the address set forth in the first paragraph of this Agreement.

In the event that Practice shall make any significant changes in its ownership, location, personnel, or procedures, Practice shall inform AIUM of the same within seven (7) business days in the time and manner established by AIUM, including use of the update form located at <https://bit.ly/accredupdateform>. A change of address, addition of a location, or addition or elimination of a partner or principal who performs or interprets ultrasound examinations shall qualify as a significant change under this paragraph. Information shall be directed in writing to AIUM. AIUM may require additional documentation, within its sole discretion, which additional documentation shall be provided to AIUM within fifteen (15) days of the request.

## **Fee for Services and Payment Terms.**

Fees. The Practice shall pay a nonrefundable fee (“Accreditation Application Fee”) for the Services provided with respect to each Accreditation Period, in the amount determined in accordance with the fee schedule located at <https://bit.ly/accredfeeschedule>, the fees and other terms and conditions of which may change from time to time. In the event that one or more of the case studies and/or reports performed or prepared by AIUM in the course of performing the Services hereunder is judged unacceptable and the Practice is required to submit additional studies and/or reports, the Practice will be charged a fee in the amount of $50 for each additional submission, which shall be considered part of the Accreditation Application Fee.

Taxes. Fees and charges are exclusive of all sales, use and similar taxes. Practice is responsible for paying the amount of any applicable sales, use or service tax, fees or charges for Services or any other amounts charged under the Agreement delivered and invoiced to Practice (except for any tax imposed on AIUM’s net income), which AIUM may be required to collect because of its performance of this Agreement. If Practice disputes and refuses to pay any tax, Practice agrees to indemnify and hold AIUM harmless if such tax is later determined to be due and payable by Practice.

Payment. Except as provided in the applicable SOW, payment must be made by the Practice upon submission using the AIUM Accreditation Dashboard. AIUM may accept any payment without prejudice to AIUM’s right to recover any remaining balance or to pursue any other remedy available to AIUM.

Payment methods: AIUM accepts the following methods of payment (each, a "Payment Method"): Check, Visa, MasterCard, American Express, or Discover Card. AIUM will not honor any limiting, modifying, or conditional notation the Practice makes on or in connection with a payment. If applicable, the Practice is responsible for ensuring that the Payment Method on file is up-to-date at all times. If applicable, AIUM may automatically attempt to collect payment from any Payment Method left on file, without notice, when a balance comes due. AIUM shall not be liable for costs or expenses the Practice may incur, including, but not limited to, overdraft and insufficient funds fees from any financial institution or other third party as a result of AIUM’s attempts to collect payment from the Payment Method. The Practice assumes complete responsibility for any third-party costs or expenses Practice may incur as a result of AIUM’s billing actions.

Payment Dispute: Practice must notify AIUM of any dispute concerning any payment within 15 business days after receipt of the invoice. In the event Practice fails to timely provide such notification, it shall be deemed to accept the Accreditation Application Fee and any other charges in the invoice. Practice may withhold such portion of the invoice as represents the amount in good faith dispute pending resolution of the dispute, upon timely written notice to AIUM concerning same. AIUM and Practice will use their good faith efforts to resolve any disputed fees or charges or refusal of payment. AIUM may, in addition to asserting any of AIUM’s other rights, suspend any further Services if Practice’s non-payment continues beyond 60 business days.

## **Term and Termination.**

The Effective Date of this Agreement is as specified above. The Term of the Agreement will begin on the Effective Date and end thirty-six months thereafter (the “Initial Term”). Following the Initial Term, the Agreement will renew for successive thirty-six month terms (each, a “Renewal Term”) until such time as either Party provides the other Party with written notice of termination as provided below. For purposes of this Agreement, the “Term” means and includes the Initial Term and any Renewal Term.

Automatic Termination. This Agreement shall automatically terminate as of the earlier to occur of the following: (1) the date on which AIUM is no longer legally permitted to provide the Services under this Agreement; or (2) the date Practice becomes insolvent, or bankrupt, are subject to liquidation, receivership, or conservatorship. In the event that only a portion of the Services are determined to be legally impermissible only such Services shall be ceased and the Agreement shall otherwise remain in full force and effect.

Termination for Cause. This Agreement may be terminated as of the earlier of the following: (1) by AIUM upon the failure of Practice to pay any undisputed fees or charges within 10 business days after written notice to Practice; (2) by either party upon the material breach of the Agreement by the other party (other than for the obligation to pay fees for Services) and if the other party has neither (i) cured the breach within 30 business days of notice nor (ii) taken any substantial steps toward curing the breach.

Mutual Termination. Notwithstanding anything to the contrary in this Agreement, the Parties may mutually agree in writing to terminate this Agreement at any time upon advanced written notice of at least 60 days.

Payments upon Termination. No later than 30 business days following the expiration or termination of this Agreement for any reason, Practice shall pay to AIUM all undisputed amounts due and payable hereunder.

## **Cooperation and Documentation for Accreditation.**

Practice shall reasonably cooperate with AIUM to enable members of AIUM staff to perform the Services or any Audit or Inspection hereunder. This cooperation includes, without limitation, providing access to facilities, equipment, systems, and Documentation as reasonably necessary and appropriate.

Specifically, Practice shall provide to AIUM documentation to support the Practice’s request for accreditation, including without limitation ultrasound examination images and reports, lists of patients who have undergone certain ultrasound-guided invasive procedures, pathology reports and other correlative data, and/or patient schedule logs, as well as any additional documentation AIUM may reasonably request to assist it in making the necessary determinations for accreditation (“Documentation”).

Practice agrees that all Documentation provided to AIUM shall be accurate and understands that falsification (including deletion or fabrication of data or misrepresentation of any fact) shall result in the refusal and/or revocation of accreditation and referral to appropriate state and federal government agencies. AIUM shall be entitled to conclusively rely on such Documentation with respect to performance of the Services. AIUM shall be under no duty to make an investigation or inquiry as to the truth, accuracy, or completeness of any Documentation or information contained therein. If and to the extent that AIUM acts or fails to act as a result of or based upon Documentation provided by Practice, AIUM shall be relieved of any liability arising therefrom.

Practice understands and agrees that a request for accreditation cannot be acted upon unless and until the application is complete, which includes any requested Documentation. If the Practice fails to complete its application, accreditation will not be granted and the fee for processing the application will not be refunded. AIUM shall not be responsible or liable in any way on account of Practice’s failure to provide such cooperation or Documentation.

## **Intellectual Property and Equipment.**

Each party agrees that except as provided below, it shall acquire no right, title or interest in or to the other party's information, software, data, tools, processes or methods, or any products, formulae, copyrights, trademarks, service marks, trade secrets, patents or any other intellectual or intangible property or property rights of the other by virtue of the service provided or materials delivered pursuant to this Agreement. Practice shall retain all right, title and interest in and to all material, data and content provided to AIUM in connection with the delivery of the Services. AIUM shall own all right title and interest in and to AIUM’s trade secrets, Confidential Information or other proprietary rights in any creative or proprietary ideas, information or other material used by AIUM or presented to Practice including, but not limited to: data, software, modules, components, designs, utilities, databases, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, report formats, manner of data expression and specifications.

No party may use the other party's trademarks, service marks, trade names or product names other than as explicitly set forth in this Agreement. The Practice grants the AIUM the right to publish, and to otherwise inform others, that the Practice has received accreditation and the date of such accreditation. Practice shall not advertise or publicize its AIUM accreditation or application for accreditation through announcements, brochures, or other media unless and until accreditation has been granted in writing.

If AIUM installs or provides any AIUM-owned hardware or software tools, including through any website or application made available in connection with the Services, to facilitate AIUM’s performance of any Services, Practice agrees to use the hardware or software solely for Practice’s internal purposes to facilitate the Services, and only as described in the terms and conditions communicated by AIUM or maintained on any such website or application. Practice may not distribute the hardware or software, and may not reverse engineer, decompile, or disassemble the hardware or software. Practice’s right to use the hardware or software shall automatically terminate on termination of this Agreement or on completion of the applicable Services for which the hardware or software was provided.

## **Representations and Warranties.**

AIUM represents and warrants to the Practice:

1. AIUM is a legal entity duly organized and existing, and is in good standing under the laws of the jurisdiction of its organization.
2. The Services to be provided by AIUM hereunder will be performed in a professional, competent, and workmanlike manner.
3. AIUM has and will maintain during the Term any professional licenses, registrations, and permits required by law for provision of the Services.
4. AIUM is an independent contractor and not an employee or agent of Practice.

The Practice agrees to abide by AIUM’s official statements on the prudent use of ultrasound, which can be accessed via the links provided below:

* **Prudent Clinical Use and Safety of Diagnostic Ultrasound** *(approved 5/20/19)*: <https://www.aium.org/officialStatements/34>
* **Prudent Use and Safety of Diagnostic Ultrasound in Pregnancy** *(approved 5/19/20)*: <https://www.aium.org/officialStatements/79>

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, AIUM SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM OR OTHERWISE, WITH RESPECT TO THE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY MAKES ANY WARRANTY HEREUNDER TO ANY THIRD PARTY ON BEHALF OF THE OTHER PARTY.

## **Indemnity.**

Notwithstanding any provision of this Agreement to the contrary, Practice acknowledges that accreditation by the AIUM under this Agreement does not constitute a representation or warranty by AIUM of any kind with respect to the delivery of services by Practice to any specific individual or patient. Practice shall hold the AIUM and its officers, directors, agent representatives, and employees harmless from, and shall indemnify them for, any and all damages, claims, judgments, losses, costs and expenses arising directly or indirectly from the delivery of services by Practice, its physicians, employees, independent contractors or agents to any individual or patient, or Practice’s use or misuse of the Services.

Each party (“**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other, their affiliates, the present and former officers, members, shareholders, directors, employees, representatives, attorneys, and agents of any of these, and their successors and assigns (each, an “Indemnified Party”) from and against any and all losses, liabilities, demands, claims, suits, costs, penalties, fines, damages and expenses (including reasonable attorneys’ fees and costs of investigation and litigation)(collectively, “Claims and Losses”) incurred by the Indemnified Party as the result of any claim by a third party arising out of the Indemnifying Party’s gross negligence or willful misconduct; provided, however, that the Indemnifying Party shall not be required to reimburse the Indemnified Party for such amounts to the extent the court rendering the judgment or the agency making the award determines that the liability underlying the judgment or award (and attorneys’ fees or penalties with respect thereto) was caused by the negligence, breach, fraud or criminal conduct of the Indemnified Party. The Indemnified Party shall promptly notify the Indemnifying Party of any potential claim covered by this indemnity, cooperate with the Indemnifying Party in the investigation and defense of the same, and allow the Indemnifying Party to control the negotiation, litigation and settlement of the claim. The Indemnifying Party’s undertaking to defend, indemnify and hold harmless shall be limited to the extent that any failure to satisfy the requirements in the preceding sentence adversely affects the defense of, or ability to settle, such losses, liabilities, claims, damages or expenses.

## **Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY OR ANY THIRD PARTY, OR FOR LOSS OF BUSINESS, PROFITS, BUSINESS INTERRUPTION, OR LOSS OF DATA, REGARDLESS OF WHETHER SUCH PARTY RECEIVES NOTICE OF THE POTENTIAL FOR SUCH DAMAGES.

NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH, THIS AGREEMENT, AS WELL AS ANY BUSINESS ASSOCIATE AGREEMENT ENTERED INTO BETWEEN THE PARTIES, IF APPLICABLE, IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY FOR ANY CLAIMS, ACTIONS, FEES, COSTS, MITIGATION-RELATED OR OTHER EXPENSES, PENALTIES OR SIMILAR AMOUNTS RELATING TO OR ARISING HEREUNDER REGARDLESS OF THE FORM OF ACTION (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, PRODUCTS LIABILITY, STRICT LIABILITY, COMPLIANCE REVIEW OR SIMILAR INQUIRY), EXCEED ONE YEAR OF FEES PAID HEREUNDER FOR THE SERVICES PROVIDED.

## **Insurance.**

During the term of this agreement, AIUM agrees to maintain, at its own expense, the following minimum insurance coverage and limits:

1. Worker’s Compensation insurance as required by law and employer’s liability insurance.
2. Commercial General Liability Insurance coverage for damages to any property or person with limits of one million dollars ($1,000,000) for each occurrence and two million dollars ($2,000,000) aggregate.
3. Errors and Omissions Liability Insurance with a limit of one million dollars ($1,000,000) for each occurrence and in the aggregate.
4. Cyber Liability Policy with limits of one million dollars ($1,000,000) for each occurrence and aggregate.

If requested, AIUM shall provide to Practice insurance certificates showing compliance with this paragraph.

## **Dispute Resolution and Escalation Policy.**

The parties shall make a good faith effort to resolve, without resort to arbitration or litigation, any dispute arising under or related to this Agreement before resorting to litigation.

Any controversies arising under any portion of this Agreement shall be submitted to arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted in Maryland. The arbitrator’s decision shall be final and binding on the parties. The cost of arbitration shall be borne by the party against whom the arbitrator decides.

Notwithstanding the paragraph above, each party acknowledges that violation by it of any provision of Sections 2, 6, 7, and 12 of this Agreement may cause irrepar­able damage to the other party for which any remedy at law would be inadequate and that the affected party shall be entitled either in any court of law or equity or in any arbitration proceed­ing, whichever forum is selected by the affected party, to (i) temporary, prelimin­ary, permanent, and other injunctive relief against any breach of the provi­sions con­tained in such sections and (ii) such damages as may be awarded.

## **Confidential Information**

Each party acknowledges that it and its officers, employees, independent contractors, agents or subcontractors may, in the course of the Agreement, be exposed to or acquire information that is proprietary or confidential to the other party.

Definition. “Confidential Information” shall include: any information relating to a party’s products, research, development, trade secrets, processes, procedures, formulas, business practices, pricing, business plans, strategies, budgets, customer and vendor relationships, financial information and other similar business information of a confidential nature. The term “Confidential Information” shall not include information that is (a) known to the receiving party prior to disclosure by the disclosing party or its personnel; (b) publicly available through no act or omission of the receiving party; or (c) lawfully received by the receiving party from a third party (other than the disclosing party’s former or current personnel) that is not under any confidentiality obligation to the disclosing party.

Use. Each party agrees to use Confidential Information received from the other party pursuant this Agreement solely in connection with the performance of such party's obligations under this Agreement. Each party agrees to use reasonable measures, no less stringent than those measures used by the party to protect its own confidential and proprietary information, to protect the Confidential Information of the other party from disclosure to any third party. Unless authorized to do so in writing by the other party, neither party, nor any third party acting on either's behalf, will for any reason use or disclose to any person any of the other party's Confidential Information. The term "person" as used in this Section shall be interpreted to include, without limitation, any individual, partnership, corporation or other entity. Nothing in this Agreement shall be construed as granting any rights to the receiving party, by license or otherwise, to any of the disclosing party's Confidential Information, except as expressly stated in this Agreement. In the event that a party is required to disclose Confidential Information to a court or governmental agency or pursuant to any other applicable law, such party shall, to the extent practicable prior to such disclosure, and as soon as practicable and by the best available means, notify the other party to allow it an adequate opportunity to object to the disclosure order or to take other actions to preserve the confidentiality of the information. Prior to any disclosure pursuant to this Section, a party required to disclose Confidential Information shall cooperate with the party claiming confidentiality of the information in such party’s reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment.

HIPAA. AIUM acknowledges that, in the course of performing Services, AIUM may receive certain health information that constitutes “protected health information” as that term is defined under the privacy and security regulations issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 CFR Parts 160-164 ("Protected Health Information" or “PHI”). With respect to PHI, to the extent AIUM is a business associate under HIPAA on account of providing the Services, AIUM agrees to abide by the terms of the Business Associate Agreement attached hereto as Appendix B.

## **Employee Non-Solicitation.**

Each party acknowledges that the other party’s employees and contractors are valuable business assets, and agrees not to (for itself or for any third party) offer employment to or otherwise hire, engage the services of, solicit or induce the termination of employment or services of, any employee or contractor of the other party (or any affiliate thereof) engaged in providing Services under this Agreement or otherwise introduced to the party as part of the engagement hereunder; and such obligations shall apply during the Term or for a period of one (1) year after such employee terminates his or her employment or service relationship with the other party, whichever occurs earlier, unless the other party gives its express consent thereto in writing. Nothing in this Section shall or shall be construed to prohibit either party from hiring an employee of the other party or an affiliate of such other party who has responded to a general solicitation of employment not specifically directed at that employee. The restrictions hereunder apply to current and future employees of a party during the Term (as well as employees of or any subsidiary or affiliate of a party hereto).

## **General Provisions.**

Severability & Waiver. The invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision is determined to be invalid, unenforceable or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement shall remain in full force and effect. No term or condition of this Agreement shall be deemed waived, and no breach shall be deemed excused, unless such waiver or excuse is in writing and is executed by the party from whom such waiver or excuse is claimed. No such waiver shall be deemed a waiver of any preceding or succeeding breach or right in the same or in any other provision hereof.

Nondiscrimination. Each party agrees to comply with all applicable laws and regulations, including without limitation equal employment opportunity laws, immigration laws including the completion of I-9 forms, and laws relating to affirmative action, and shall not discriminate in employment practices nor otherwise in the provision of the services contemplated herein based on race, creed, color, gender, age, national origin, disability, religion, veteran status, marital status, sexual orientation, and in the case of patients, if applicable, based on ability to pay or other nonmedical factor, and shall not with respect to any person engage in any other discriminatory practice prohibited by law.

Headings and References. Section numbers and headings are used for convenience and are not to be construed as limitations of the substance of any provision.

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard for its conflicts of law provisions. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in state or federal courts located in the State of Maryland, and each party irrevocably submits to the sole and exclusive jurisdiction of these courts in person, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

Force Majeure. With the exception of a party's obligation to make payments properly due to the other party, neither party shall be deemed in default or otherwise liable under this Agreement for any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

Assignment. Neither this Agreement nor any right or obligation arising hereunder may be assigned (voluntarily, by operation of law, or otherwise), in whole or in part, by either party without the prior written consent of the other party, such consent not to be unreasonably withheld; provided, however, that either party shall have the right, upon at least thirty (30) days’ advance written notice to the other party, to assign this Agreement to any person or entity that acquires all or substantially all such party’s business or assets or any entity controls, is controlled by, or is under common control with party. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than parties and their respective successors or assigns, any rights, remedies or obligations whatsoever.

Entire Agreement & Amendment. This Agreement states the entire understanding of the parties relating to the subject matter thereto and supersedes all prior discussions and negotiations and may only be modified in a writing signed by both parties. This MSA and the one or more attached Appendices, each fully incorporated herein, together comprise the complete Agreement regarding the Services to be provided hereunder. From time to time, additional terms governing the Services to be provided under this Agreement may be contained in a subsequent Appendix, and each such Appendix shall become part of this Agreement when signed on behalf of AIUM and Practice effective as of the date set forth in such Appendix.

Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties may deliver signed copies of this Agreement via facsimile or as a PDF via email, and such copies shall be deemed originals. Communication by electronic mail shall not be construed as an effective amendment to the Agreement unless accompanied by a manually signed attachment.

Notice. Each party will designate and maintain during the term of the Agreement a point of contact, and will notify the other party of the name of such point of contact who will have the authority and power to make decisions with respect to actions to be taken in connection with the Agreement. All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail, with tracing capability, or by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.

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| --- | --- |
| For AIUM | For Practice |
| American Institute of Ultrasound in Medicine  Attention: **Therese Cooper, Chief Learning Officer**  14750 Sweitzer Lane, Suite 100  Laurel, MD 20707 | **(practice name)**  Attention:       **(name of contact person)**  **(street address)**  **(city, state, zip)** |

Independent Contractors. The parties to the Agreement are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between AIUM and Practice. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

## **Signatures.**

Intending to be legally bound and having reviewed this Agreement in its entirety, AIUM and Practice have caused this Agreement to be executed by their authorized representatives effective as of the date set forth above.

|  |  |  |
| --- | --- | --- |
|  | American Institute of Ultrasound in Medicine | **(practice name)** |
| AUTHORIZED SIGNATURE: |  | **Authorized Signature:** |
| PRINTED NAME: | Therese Cooper | **(printed name)** |
| TITLE: | Chief Learning Officer | **(title)** |
| COMPANY NAME ADDRESS & TELEPHONE: | American Institute of Ultrasound in Medicine  Attention: **Therese Cooper**  14750 Sweitzer Lane, Suite 100  Laurel, MD 20707  **(301) 498-4100 x 1772** | **(practice name)**  Attention:       **(name of contact person)**  **(street address)**  **(city, state, zip)**  **(telephone)** |

**APPENDIX A**

***(separate accreditation application required for each participating subsidiary or affiliate, if applicable)***

**Participation Agreement**

By executing this Participation Agreement,      (name of participating subsidiary or affiliate)(“Participating Affiliate”) agrees to receive Services as described under the Master Services Agreement (“MSA”) entered into on       (month and day),       (year) by and between       (company name) (“Practice”), and the American Institute of Ultrasound in Medicine (“AIUM”). The Participating Affiliate represents and warrants that it is a subsidiary or affiliate of the Practice. The Participating Affiliate accepts and agrees to be bound by all of the terms and conditions set forth in the MSA, including without limitation provisions related to fees and all Appendices and any applicable SOWs. For avoidance of doubt, the Participating Affiliate also agrees that any services it receives under the MSA shall be subject to the applicable fees thereunder. The Participating Affiliate also agrees to any changes in the MSA agreed to by the Practice, including any changes related to fees. The Participating Affiliate agrees to hold AIUM harmless for any dispute of any kind between the Participating Affiliate and the Practice relating to MSA or any other matter.

Intending to be legally bound and having reviewed the MSA and all Appendices, including the Business Associate Agreement and Accreditation Application Fee, Participating Affiliate has caused this Agreement to be executed by its authorized representatives effective as of       (month and day),       (year).

|  |  |  |
| --- | --- | --- |
|  | American Institute of Ultrasound in Medicine | **(name of participating subsidiary/affiliate)** |
| AUTHORIZED SIGNATURE: |  | **Authorized Signature:** |
| PRINTED NAME: | Therese Cooper | **(printed name)** |
| TITLE: | **Chief Learning Officer** | **(title)** |
| COMPANY NAME ADDRESS & TELEPHONE: | American Institute of Ultrasound in Medicine  Attention: **Therese Cooper**  14750 Sweitzer Lane, Suite 100  Laurel, MD 20707  **(301) 498-4100 x 1772** | **(practice name)**  Attention:       **(name of contact person)**  **(street address)**  **(city, state, zip)**  **(telephone)** |

**APPENDIX B**

**Business Associate Agreement**

Effective       (month and day),       (year).

This BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is entered into by and between       (the “Covered Entity”), and American Institute of Ultrasound in Medicine (“Business Associate”) (referred to collectively herein as the “parties”).

WHEREAS, in the course of carrying out the services under the Master Services Agreement dated       (MSA effective date on page 1) (“Services Agreement”), entered into between the parties, Business Associate may have access to certain protected health information subject to the Health Insurance Portability and Accountability Act (“HIPAA”), as amended by the American Recovery and Reinvestment Act of 2009, including the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, with respect to which Business Associate may be considered a “business associate” as defined under the HIPAA Privacy and Security Rules; and

WHEREAS, Covered Entity desires to provide to Business Associate with such access provided certain safeguards are maintained by Business Associate; and

NOW, THEREFORE, in consideration of the following mutual covenants, and for continuing the services under or referenced in the Services Agreement, the parties agree as follows:

1. ***Definitions***

Except as otherwise provided below, the terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy and Security Rules, as the case may be.

(a) *HIPAA Privacy and Security Rules* means the Privacy Rule, Security Rule, the applicable provisions of the HITECH Act and its implementing regulations published on January 25, 2013.

(b) *Individual* has the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(c) *Privacy Rule* means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160-164.

(d) *Protected Health Information (PHI)* has the same meaning as the term “protected health information” in 45 CFR §160.103, including electronic protected health information, but is limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(e) *Secretary* means the Secretary of the Department of Health and Human Services or the Secretary’s designee.

(f) *Security Rule* means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160-164.

1. ***Obligations and Activities of Business Associate***

(a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule (specifically, Subpart E of 45 CFR Part 164), Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

(b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement or required by law. In addition, Business Associate agrees to implement administrative, physical and technical safeguards consistent with the applicable requirements of the Security Rule (including 45 CFR §§ 164.308, 164.310, 164.312, 164.316) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI.

(c) Business Associate agrees to promptly report to Covered Entity (i) any use or disclosure of PHI not provided for by this Agreement and (ii) any security incident as defined under the Security Rule. The parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents (as defined below) for which notice to Covered Entity by Business Associate shall be required upon request from Covered Entity, but no more frequently than once per year. “Unsuccessful security incidents” shall include, but not be limited to, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. In addition, Business Associate shall report any breach of unsecured PHI without unreasonable delay, but not later than ten (10) calendar days following the date it becomes aware of such breach of unsecured PHI. To the extent any breach of unsecured PHI is attributable to a breach of the obligations under this Agreement by Business Associate, upon written request Business Associate shall bear the costs incurred by Covered Entity to the extent it is necessary for Covered Entity to comply with its respective legal obligations relating to such breach under the applicable breach notification statute or regulation, which shall include the following costs reasonably incurred in responding to such breach: (1) the reasonable cost of preparing and distributing notifications to affected individuals, (2) the reasonable cost of providing notice to government agencies, credit bureaus, and/or other required entities, (3) the reasonable cost of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months, or longer if required by law, and (4) the reasonable cost of call center support for such affected individuals for a specific period not to exceed thirty (30) days from the date the breach notification is sent to such affected individuals.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to which it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity, agrees to the substantially similar obligations concerning compliance with the HIPAA Privacy and Security Rules that apply through this Agreement to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the written request of Covered Entity or an Individual and in a reasonable time and manner, to PHI Business Associate maintains in a designated record set, to Covered Entity to the extent necessary to enable Covered Entity to meet the requirements under 45 CFR §164.524. In no event shall Business Associate be required to communicate directly with individuals in connection with such requests.

(f) Business Associate agrees to make any amendment(s), at the written request of Covered Entity or an Individual and in a reasonable time and manner, to PHI Business Associate maintains in a designated record set to the extent necessary to enable Covered Entity to meet the requirements under 45 CFR §164.526. In no event shall Business Associate be required to communicate directly with individuals in connection with such requests.

(g) Business Associate agrees to document disclosures of PHI and information related to such disclosures to the extent necessary to enable Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(h) Business Associate agrees to provide to Covered Entity, in a reasonable time and manner following Covered Entity’s written request, information collected in accordance with the preceding paragraph (g) above, to the extent necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(i) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary, in a reasonable time and manner or as designated by the Secretary, to the extent necessary and for purposes of determining Covered Entity's compliance with the HIPAA Privacy and Security Rule.

(j) Except for payments from Covered Entity for services performed pursuant to this Agreement and the Services Agreement, Business Associate may not directly or indirectly receive remuneration in exchange for PHI.

(k) Business Associate may not use or disclose PHI for research or marketing purposes without first receiving prior written approval from the Covered Entity and obtaining the necessary authorization from the affected individuals.

1. ***Permitted Uses and Disclosures by Business Associate***

*General Use and Disclosure Provisions*

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

*Specific Use and Disclosure Provisions*

(a) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) disclosures are required by law, or (ii)(A) Business Associate obtains reasonable 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 purpose for which it was disclosed to the person, and (ii)(B) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

1. ***Obligations of Covered Entity***

(a) Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity’s notice of privacy practices that may affect Business Associate’s duties and obligations under this Agreement.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s duties and obligations under this Agreement.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate’s duties and obligations under this Agreement.

(d) Except as permitted under the HIPAA Privacy and Security Rules, Covered Entity shall request from Business Associate, or request that Business Associate disclose to a third party, only the minimally necessary PHI to accomplish the purposes of the request or disclosure.

(e) Covered Entity shall comply in all respects with the applicable provisions of the HIPAA Privacy and Security Rules.

1. ***Term and Termination***

(a) *Term*. The term of this Agreement shall be effective as of date noted above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

(b) *Termination for Cause*. Upon either party’s knowledge of a material breach by the other party, the non-breaching party shall either:

(1) Provide an opportunity for breaching party to cure the breach or end the violation and terminate this Agreement and the underlying Services Agreement, if any, if the breaching party does not cure the breach or end the violation within a reasonable time specified by the non-breaching party; or

(2) Immediately terminate this Agreement and the Services Agreement, if any, if the breaching party has breached a material term of this Agreement and, in the non-breaching party’s sole discretion, cure is not possible.

(c) *Effect of Termination*.

(1) Except as provided in paragraph (2) of this section V(c), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections and obligations of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

1. ***Miscellaneous***

(a) *Regulatory References*. A reference in this Agreement to a section in the HIPAA Privacy or Security Rules means the section as in effect or as amended.

(b) *Interpretation*. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Privacy and Security Rules.

(c) *Notices*. Any notice which is to be given by one party to the other under this Agreement will be given in the manner specified in the Services Agreement.

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