

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between each of the undersigned.

It is anticipated that PDMD, Inc., a California medical corporation ("Discloser") may, from time to time, disclose to the other party to this Agreement ("Recipient") certain technical and/or business information which Discloser regards as proprietary and confidential. The purpose of this Agreement is to set forth the terms and conditions under which such information is to be maintained in confidence by Recipient.

In consideration of the mutual covenants, conditions, and obligations contained herein, and intending to be legally bound, the parties agree as follows:

1. "Proprietary Information", as used herein, shall mean (i) all technical and/or business information which, prior to the termination of this Agreement (the "Disclosure Period"), is disclosed by Discloser to Recipient, including any third-party confidential information which may be properly disclosed by Discloser, including but not limited to Discloser's business, operations, business plans, patient names, financial information including patient and physician payment data, contracts with other doctors, and arrangements with other doctors, (ii) any information which is learned by Recipient from Discloser or through the inspection or evaluation of Discloser's technical and/or business information, (iii) the existence and the terms and conditions of this Agreement, and (iv) the existence and the substance of the discussion between the parties relating to the subject matter hereof. Proprietary Information may be oral or written or learned by Recipient through observation. The term "Proprietary Information" shall not, however, include any information which:

(a) at the time of disclosure to Recipient, had previously been published and is a part of the public domain;

(b) is published and is a part of the public domain after having been disclosed to Recipient, unless such publication is through the fault or the breach by Recipient of its obligations under this Agreement;

(c) prior to disclosure to Recipient, was already in Recipient's possession on a non-confidential basis, as evidenced by written records kept by Recipient in the ordinary course of its business or as evidenced by actual prior use by Recipient;

(d) subsequent to disclosure to Recipient, is obtained by Recipient on a non-confidential basis from a third party who is lawfully in possession of such information and who is not in violation of any contractual or other legal or fiduciary duty with respect to such information; or

(e) is independently developed by Recipient without the use of any Proprietary Information of Discloser as evidenced by written records kept by Recipient in the ordinary course of its business.

Recipient shall have the burden of proof with respect to any of the above events on which Recipient relies as relieving it of the restrictions hereunder on disclosure or use of the Proprietary Information.

2. Recipient shall (i) disclose Disclosure's Proprietary Information only to its employees and agents having a need to know, (ii) use at least as great a standard of care in protecting Disclosure's Proprietary Information as it uses to protect its own information of like character but in any event no less than a reasonable degree of care, (iii) use such Proprietary Information only for evaluating purposes unless otherwise agreed to by Discloser in writing, and (iv) upon request of the Discloser, return or destroy all materials containing Proprietary Information, including, without limitation, all documents, drawings, programs, lists, models, records, compilations, notes, extracts, and summaries regardless of whether prepared by Discloser or Recipient or any of their respective permitted employees or agents, and all copies thereof. For purposes of this Paragraph, the term "materials" includes all information fixed in any tangible medium of expression, in whatever form or format, whether now known or hereafter created.

3. Disclosure of Proprietary Information shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body of the United State or any political subdivision thereof or as otherwise required to be disclosed by law; provided, however, that Recipient shall first have given written notice to Discloser so that Discloser may seek an appropriate protective order.

4. The parties agree that as of the date of this Agreement or the date on which Recipient is furnished any Proprietary Information from Discloser, whichever occurs first, a confidential relationship shall arise and exist between the parties and that for a period of five (5) years (the "Protection Period") following the Termination of this Agreement, Recipient agrees that it shall retain such Proprietary Information in strict confidence, making no use, directly or indirectly, of such Proprietary Information nor disclosing such Proprietary Information to any third party without the express written authorization from the Discloser, except as provided in Paragraphs 2. and 3. above.

5. All information is provided "AS IS", and without warranty of whatever kind or nature, whether express or implied, including without limitation warranties of title and infringement; except that Discloser hereby warrants that it has the right to disclose the information to Recipient without limitation and any such disclosure does not in any manner whatsoever breach any agreement to which Discloser presently is a party.

6. Each party shall have the right to terminate this Agreement upon ten (10) days advance written notice to the other party. Termination of this Agreement shall terminate the Disclosure Period, but not the Protection Period. The provisions of this Agreement, including

the obligation to protect received Proprietary Information, shall survive and continue after expiration of this Agreement to the end of the Protection Period.

7. All Proprietary Information of Discloser and any derivatives thereof whether created by Discloser or Recipient, shall remain the property of Discloser. No right or license, express or implied, under any patent, copyright, trademark, trade secret, or other proprietary right is granted hereunder. Neither party has an obligation under this Agreement to purchase any item or service from the other party, or to enter into any contractual arrangement or agreement with the other party.

8. No modifications to this Agreement or waiver of any of its terms will be effective unless set forth in writing and signed by the party against whom enforcement is sought. Failure by any party to require the other party's performance of any of the terms of this Agreement, or the waiver by any party of any breach of this Agreement by the other party shall not prevent subsequent enforcement of such term or be deemed a waiver of any subsequent breach hereof.

9. No agency or partnership relationship shall be created between the parties to this Agreement.

10. Each party agrees to comply with all export laws and regulations of the United States applicable to any information disclosed hereunder.

11. This Agreement shall be binding upon and inure the benefit of the parties herein and their respective successors and permitted assigns; provided, however, that no party shall have the right to transfer or assign its interests in this Agreement, in whole or in part, without the prior written consent of the other party.

12. For the convenience of the parties, this Agreement may be executed in or more counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one of the same instruments.

13. This Agreement and each provision hereof shall be valid and enforced to the fullest extent permitted by law. The invalidity or unenforceability of any provision herein shall not affect the validity of the remaining provisions of this Agreement, and the parties further agree to substitute for the invalid or unenforceable provision a valid or enforceable provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

14. Recipient hereby acknowledges that unauthorized disclosure or use of Discloser's Proprietary Information could cause irreparable harm and signify injury to Discloser that may be difficult to ascertain. Accordingly, Recipient agrees that Discloser will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

15. Should there be any litigation instituted between the parties hereto as to this Agreement, its interpretation, or an alleged breach thereof, then in such case the prevailing party

shall be entitled to receive as part of its award its attorney's fees and costs of such litigation, as well as any award thereof.

16. This Agreement shall be governed by and construed and in accordance with the laws of the State of California, excluding that state's conflicts of law provisions. Any litigation concerning this Agreement, its interpretation, or an alleged breach thereof shall only be filed in a state or federal court located in Los Angeles County, California.

17. This Agreement is the entire agreement among the parties with respect to the subject matter hereof, there being no prior written or oral promises or representations with respect to such subject matter not incorporated herein. All prior negotiations, representations, discussions, contracts or agreements concerning the disclosure and protection of Proprietary Information by the parties are canceled and merged herein.

18. The primary contact for each party, for purposes of coordinating the flow of Proprietary Information among the parties, shall be as set forth below.

19. All notices and demands of any kind which either party may be required or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be served to the parties at the address or facsimile numbers set forth below or at such other addresses as may be designated hereafter by the parties in writing. The personal delivery, the sending of a notice by Federal Express (or similar overnight delivery method) or by postage prepaid, certified mail, return receipt requested, or by the transmission by telecopy or other means of facsimile shall be sufficient service.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on their behalf on the date and year first above written.

“Discloser”  
PDMD, Inc.

“Recipient”

\_\_\_\_\_  
(PRINT NAME)

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_