

HIPAA TRADING PARTNER AGREEMENT
For Protection of Privacy and Security Assurance of Personal Health Information

This Trading Partner Agreement (TPA) is entered into by and between Biomechanical Services Inc. and/or Ped Negotium Inc. (the “Covered Entities”), effective on the date of electronic submission of personal and professional data onto designated data storage server(s) selected and controlled by Covered Entities [“Effective Date”], hereafter designating the person submitting said data as a “Business Associate” to the Covered Entities, and immediately subject to the provisions herein, irrespective of any acknowledgement or confirmation by Covered Entities.

I. RECITALS

Section 1. Covered Entities is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164 (collectively “Privacy and Security Regulations”)

Section 2. Business Associate either 1) performs certain functions for, on behalf of or in association with Covered Entities involving the disclosure of Protected Health Information (“PHI”) by Covered Entities to Business Associate, or the creation or receipt of PHI by Business Associate on behalf of Covered Entities; or 2) provides legal, actuarial, accounting, consulting, data aggregation, management, accreditation, administrative or financial services for Covered Entities involving the disclosure of PHI by Covered Entities or another business associate of Covered Entities.

Section 3. The Privacy and Security Regulations require Covered Entities to enter into an agreement with Business Associate in order to mandate certain protections for the privacy and security of PHI, and those Regulations prohibit the disclosure of PHI from Covered Entities to Business Associate if such an agreement is not in place.

Section 4. The parties desire to enter into this agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Trading Partner Agreement.

In consideration of the mutual promises and agreements below and in order to comply with all legal requirements for the protection of this information, the parties agree as follows:

II. GENERAL PROVISIONS

Section 1. **Effect.** This Trading Partner Agreement supplements, modifies and amends any and all agreements, whether oral or written, currently in existence or which are entered into before the expiration or termination of this Trading Partner Agreement, between the parties involving the disclosure of PHI by Covered Entities to Business Associate, or the creation or receipt of PHI by Business Associate on behalf of Covered Entities (the “Agreement(s)”). The terms and provisions of this Agreement shall supersede any other conflicting or inconsistent terms and provisions in any Agreement(s) between the parties, including all exhibits or other attachments thereto and all documents incorporated therein by reference. Without limitation of

the foregoing, any limitation or exclusion of damages provisions in the Agreement(s) shall not be applicable to this Trading Partner Agreement.

Section 2. **Amendment.** Business Associate and Covered Entities agree to amend this Trading Partner Agreement to the extent necessary to allow either party to comply with the Privacy and Security Regulations or other regulations or statutes. Business Associate agrees that it will fully comply with all such Regulations and that it will agree to amend this Trading Partner Agreement to incorporate any material required by the Regulations.

Section 3. **Definitions.** Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in Part V of this Trading Partner Agreement.

III. OBLIGATIONS OF BUSINESS ASSOCIATE

Section 1. **Use and Disclosure of Protected Health Information.** Business Associate may use and disclose PHI only as required to satisfy its obligations under the Agreement(s), as permitted herein, or required by law, but shall not otherwise use or disclose any PHI. Business Associate shall not, and shall ensure that its directors, officers, employees contractors and agents do not, use or disclose PHI received from the Covered Entities in any manner that would constitute a violation of the Privacy Regulations if so used or disclosed by the Covered Entities, except that Business Associate may use or disclose PHI (i) for Business Associate's proper management and administrative services, (ii) to carry out the legal responsibilities of Business Associate or (iii) to provide data aggregation services relating to the health care operations of the Covered Entities if required under the Agreement(s). Business Associate hereby acknowledges that, as between Business Associate and the Covered Entities, all PHI shall be and remain the sole property of the Covered Entities, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to this Trading Partner Agreement. Business Associate further represents that, to the extent Business Associate requests that the Covered Entities disclose PHI to Business Associate, such a request is only for the minimum necessary PHI for the accomplishment of Business Associate's purpose.

Section 2. **Safeguards Against Misuse of Information.** Business Associate agrees that it will use all appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Trading Partner Agreement. Business Associate further warrants that it shall implement as of the Effective Date, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entities.

Section 3. **Reporting of Disclosures of Protected Health Information.** Business Associate shall, within thirty (30) days of becoming aware of any use or disclosure of PHI in violation of this Trading Partner Agreement by Business Associate, its officers, directors, employees, contractors or agents or by a third party to which Business Associate disclosed PHI pursuant to Section 4 of this Trading Partner Agreement, report any such disclosure to the Covered Entities. Business Associate shall further immediately report to Covered Entities any security incident of which it becomes aware. For purposes of this Trading Partner Agreement, "Security Incident" means the attempted or successful unauthorized access use or disclosure,

modification, or destruction of information or interference with the system operations in an information system. Business Associate shall provide in such notice the remedial or other actions undertaken to correct the unauthorized Use or Disclosure. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Trading Partner Agreement.

Section 4. **Agreements with Third Parties.** Business Associate shall obtain and maintain an agreement with each agent or subcontractor that has or will have access to PHI, which is received from, or created or received by Business Associate on behalf of the Covered Entities, pursuant to which agreement such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate pursuant to this Trading Partner Agreement with respect to such PHI.

Section 5. **Access to Information.** Within five (5) days of a request by the Covered Entities for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entities such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall within two (2) days forward such request to the Covered Entities. Any denials of access to the PHI requested shall be the responsibility of the Covered Entities. **[May not be applicable if Business Associate does not maintain PHI in a Designated Record Set.]**

Section 6. **Availability of Protected Health Information for Amendment.** Within ten (10) days of receipt of a request from the Covered Entities for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entities for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. **[May not be applicable if Business Associate does not maintain PHI in a Designated Record Set.]**

Section 7. **Accounting of Disclosures.** Within ten (10) days of notice by the Covered Entities to Business Associate that it has received a request for an accounting of disclosures of PHI, other than related to the treatment of a patient, the processing of payments related to such treatment, or the operation of a covered entity or its business associate and not relating to disclosures made earlier than six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to the Covered Entities such information as is in Business Associate's possession and is required for the Covered Entities to make the accounting required by 45 C.F.R. §164.528. At a minimum, Business Associate shall provide the Covered Entities with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to the Covered Entities. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

Section 8. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the Covered Entities available to the Secretary for purposes of determining the Covered Entities' and Business Associate's compliance with the Privacy Regulations.

Section 9. **Indemnification.** Business Associate hereby agrees to indemnify and hold the Covered Entities harmless from and against any and all liability and costs, including attorneys' fees, created by a breach of this Trading Partner Agreement by Business Associate, its agents or subcontractors, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement(s).

Section 10. **Insurance.** Business Associate shall obtain and maintain during the term of this Trading Partner Agreement liability insurance covering claims based on a violation of the Regulations or any applicable state law or regulation concerning the privacy or security of patient information and claims based on its obligations pursuant to this Trading Partner Agreement in an amount not less than \$1,000,000 per claim. Such insurance shall be in the form of occurrence-based coverage and shall name the Covered Entities as an additional named insured. A copy of such policy or a certificate evidencing the policy shall be provided to the Covered Entities upon written request.

Section 11. **Notice of Request for Data.** Business Associate agrees to notify the Covered Entities within five (5) business days of Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entities decides to assume responsibility for challenging the validity of such request, Business Associate agrees to cooperate fully with the Covered Entities in such challenge.

Section 12. **Injunction.** Business Associate hereby agrees that the Covered Entities will suffer irreparable damage upon Business Associate's breach of this Trading Partner Agreement and that such damages shall be difficult to quantify. Business Associate hereby agrees that the Covered Entities may file an action for an injunction to enforce the terms of this Trading Partner Agreement against Business Associate, in addition to any other remedy the Covered Entities may have.

IV. TERM AND TERMINATION

Section 1. **Term.** This Trading Partner Agreement shall become effective on the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Agreement(s).

Section 2. **Termination Upon Breach of Provisions Applicable to Protected Health Information.** Any other provision of the Agreement(s) notwithstanding, this Trading Partner Agreement and the Agreement(s) may be terminated by the Covered Entities upon five (5) days written notice to Business Associate in the event that the Business Associate breaches any provision contained in this Trading Partner Agreement and such breach is not cured within such five (5) day period; provided, however, that in the event that termination of this Trading Partner Agreement and the Agreement(s) is not feasible, in the Covered Entities' sole discretion, Business Associate hereby acknowledges that the Covered Entities shall have the right to report

the breach to the Secretary, notwithstanding any other provision of this Trading Partner Agreement or any Agreement(s) to the contrary.

Section 3. **Return or Destruction of Protected Health Information upon Termination**. Upon termination of this Trading Partner Agreement, Business Associate shall either return or destroy all PHI received from the Covered Entities or created or received by Business Associate on behalf of the Covered Entities and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI. Notwithstanding the foregoing, to the extent that the Covered Entities agrees that it is not feasible to return or destroy such PHI, the terms and provisions of this Trading Partner Agreement shall survive such termination and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

Section 4. **The Covered Entities' Right of Cure**. At the expense of Business Associate, the Covered Entities shall have the right to cure any breach of Business Associate's obligations under this Trading Partner Agreement. The Covered Entities shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by the Covered Entities to cure Business Associate's breach. All requests for payment for such services of the Covered Entities shall be paid within thirty (30) days.

Section 5. **Transition Assistance**. Following the termination of this Trading Partner Agreement and the Agreement(s) for any reason, Business Associate agrees to provide transition services for the benefit of the Covered Entities, including the continued provision of its services required under the Agreement(s) until notified by the Covered Entities that the alternative provider of services is able to take over the provision of such services and the transfer of the PHI and other data held by the Business Associate related to its services under the Agreement(s).

V. DEFINITIONS FOR USE IN THIS TRADING PARTNER AGREEMENT

"Data Aggregation" shall mean, with respect to PHI created or received by Business Associate in its capacity as the business associate of the Covered Entities, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

"Designated Record Set" shall mean a group of records maintained by or for the Covered Entities that is (i) the medical records and billing records about individuals maintained by or for the Covered Entities, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entities to make decisions about individuals. As used herein the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entities.

"Electronic Media" shall mean the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk,

compact disk media, EPROM (Electrically Programmed Random Access Memory) chips or any other data storage media capable of recording, transmitting, uploading or downloading PHI.

"Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual, and

(i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(ii) 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; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Protected Health Information" shall mean Individually Identifiable Health Information that is (i) transmitted by electronic media, (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. "PHI" shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g, (ii) records described in 20 U.S.C. §1232(g)(a)(4)(B)(iv), and (iii) employment records held by a Covered Entities in its role as employer. PHI includes without limitation, Electronic PHI.

"Electronic Protected Health Information" means PHI that is transmitted by electronic media or is maintained in electronic media.

"Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services.