

# Confidentiality Agreement

*FOR REFERRING PHYSICIAN ACCESS TO ONLINE PATIENT IMAGES AND REPORTS AND WEB ORDERING*

This Confidentiality Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, between Imaging Healthcare Specialists, LLC a California limited liability company (“**IHS**”) and \_\_\_\_\_ (“**you**”) who intending to be legally bound agree as follows:

- 1. Basis for Agreement.** IHS is as a “Covered Entity” under the Health Information Portability and Accountability Act of 1996 (“**HIPAA**”). Under the HIPPA rules, IHS is required to enter into this Agreement to obtain satisfactory assurances that you, a Business Associate under HIPAA, will appropriately safeguard all confidential information disclosed, created or received by you on behalf of IHS. For purposes of this Agreement, “**confidential information**” includes, but is not limited to, patient information, medical imaging reports and all other “protected health information” as such term is defined in 45 C.F.R. Section 164.501.
- 2. Use of Confidential Information.** You shall use confidential information only as needed to perform your proper duties as a referring physician. Accordingly: (a) you shall only access confidential information for which you have a need to know; (b) you shall not divulge, copy, release, sell, loan, review, alter or destroy any confidential information except as properly authorized by IHS; and (c) you shall not misuse confidential information or engage in activities or practices that could reasonably be expected to result in unauthorized or inadvertent disclosure of confidential information. Except for treatment disclosures, you shall use, disclose, or request only the limited data set (as defined in 45 CFR section 164.514(e)(2)), or if that is inadequate, the minimum confidential information necessary to accomplish the intended purpose of that use, disclosure or request, and you further agree that the party disclosing the confidential information determines what constitutes the minimum necessary confidential information to accomplish the intended purpose of the disclosure. (The term “**minimum necessary**” shall have the meaning set forth in the rules promulgated by HHS under the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, to the extent such rules are or become effective under the HITECH Act.)
- 3. Disclosure of Confidential Information.** You may disclose confidential information you obtain or create as a business associate if (a) such disclosure is required by law and necessary for the proper management and administration of your services; or (b) you obtain reasonable assurances from the recipient that the confidential information shall be held confidentially and shall not be used or further disclosed except as required by law or with such further authorizations required by law, and then only for the purpose for which it was initially disclosed to the recipient, and the recipient agrees in writing to promptly notify you (and you hereby agree to promptly notify IHS) of any unauthorized disclosure.
- 4. Security Safeguards.** You shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized

use or disclosure of confidential information, and the integrity and availability of electronic confidential information you create, receive, maintain or transmit on behalf of IHS. The security program shall include all the reasonable and appropriate policies and procedures to comply with the requirements of the HIPAA “Security Rule” (45 C.F.R. Part 160 and Subparts A and C of Part 164). In addition, you agree to (a) maintain written documentation of your policies and procedures, and of any action, activity or assessment which the HIPAA Security Rule requires to be documented; (b) retain such documentation for six (6) years from the date of its creation or the date when it last was in effect, whichever is later; (c) make this documentation available to those persons responsible for implementing the procedures to which the documentation pertains; and (d) review such documentation periodically, and update it as needed in response to environmental or operational changes affecting the security of the electronic protected health information.

5. Unauthorized Disclosure. You accept responsibility for all activities undertaken using your access code and other authorization provided by IHS. You also accept all responsibility for your misuse or wrongful disclosure of confidential information and for your failure to safeguard your access code or other authorization access to confidential information. You agree to indemnify, defend and hold IHS and its directors, officers, employees, representatives, successors and assigns free and harmless from and against all losses, claims, fines, fees, damages, charges or other liabilities sustained by any of such indemnities arising out of or related to your unauthorized disclosure or unauthorized use of confidential information or otherwise arising out of your breach of this Agreement.

6. Obligations Under The American Recovery and Reinvestment Act of 2009 (ARRA). You agree to the following:

6.1 You shall not disclose confidential information to a health plan if the individual to whom the confidential information pertains has so requested and (a) the disclosure would be for the purposes of payment or health care operations, and not for the purposes of treatment; (b) the protected health information at issue pertains to a health care item or service for which the individual pays out-of-pocket and in full; and (c) the disclosure is not required by law.

6.2 You shall comply with all rules governing marketing communications that encourage the recipient to purchase or use a product or service offered by you.

6.3 You shall clearly and conspicuously provide an opt-out notice to any recipient of health care fundraising communications.

6.4 You acknowledge you will be held to the same standards as IHS to rectify a pattern or activity or practice that constitutes a material breach or violation of your obligations under this agreement. You will also be subject to the same penalties as a covered entity for any violation of the HIPAA privacy or security requirements, and you will also be subject to periodic audits by the HHS Secretary.

- 6.5 You shall comply with all rules adopted by the HHS Secretary regarding the sale of confidential information.
7. Patient Access to Confidential Information. You shall cooperate with IHS in all respects to allow patients to exercise their right to inspect and obtain copies of their protected health information pursuant to applicable law, including but not limited to 45 C.F.R. §164.524. Among other things, this means that if you maintain IHS supplied confidential information in an electronic health record (“**EHR**”), IHS must comply with patients’ requests for access to their confidential information by giving the patient the requested information in an electronic format, and IHS may not charge the patient (and you shall not charge IHS) more than the labor costs in responding to the request for the copy (or summary or explanation). Further, you acknowledge that California law requires that copies of requested records be forwarded to patients within fifteen (15) days of their request, and you therefore agree to forward any copies requested by IHS for this purpose within (5) business days. If you receive a request from an individual for access to confidential information, you shall immediately forward such request to IHS. IHS shall be solely responsible for determining the scope of confidential information and Designated Record Set with respect to each patient request for access to confidential information. If you maintain confidential information in a Designated Record Set on behalf of IHS, you shall permit any patient, upon notice by IHS, to access and obtain copies of the patient’s confidential information in accordance with 45 C.F.R. §164.524 and California law. You shall make the confidential information available in the format requested by the individual and approved by IHS, unless the confidential information cannot be readily provided in the requested format, in which case the confidential information shall be produced in hard copy format. You may not charge the patient any fees for such access to confidential information. IHS shall reimburse you a portion of the fee charged by IHS to the individual that is proportional to the amount of confidential information produced by you in relation to the amount of confidential information produced by IHS, less IHS administrative expenses.
8. Continuing Obligation. You understand and agree that your obligations under this Agreement shall continue after termination of your access to IHS’s confidential information. You further understand and agree that your privileges hereunder are subject to periodic review, revision and, if appropriate, renewal.
9. No Ownership Interest. All confidential information shall be deemed owned by IHS unless otherwise agreed in writing. During the term of this Agreement, you shall have the right to use the confidential information solely for the purposes of this Agreement. You and its agents shall not have the right to de-identify the confidential information unless agreed by IHS in writing.
10. Access to Your Books and Records. You shall make your internal practices, books and records relating to the use and disclosure of confidential information received from, or created or received by you on behalf of IHS, available to IHS and to the Secretary of the Department of Health and Human Services for purposes of determining IHS’s compliance with the HIPAA laws and regulations.

11. Amendments to Patient Confidential Information. As directed and in accordance with the time frames specified by IHS, you shall incorporate all amendments or addenda to confidential information received from IHS. Within five (5) business days following your amendment of confidential information as directed by IHS, you shall provide written notice to IHS confirming that you have made the requested amendments or addenda. Such notice shall also include any other information requested by IHS as may be necessary for IHS to provide adequate notice to the individual in accordance with 45 C.F.R. §164.526 and California law.

12. Disclosure Accounting. If you make any disclosures of confidential information that are subject to the accounting requirements of 45 C.F.R. §164.528, you shall promptly report such disclosures to IHS. Your notice shall include the name of the individual, the recipient, the reason for disclosure and the date of the disclosure. You shall maintain all of the foregoing information in a record of each such disclosure, which record shall also include the address of the recipient of the confidential information and a description of the confidential information disclosed. You shall maintain this record for a period of six (6) years and make available to IHS upon request in an electronic format so that IHS may meet its disclosure accounting obligations under 45 C.F.R. §164.528.

13. Termination. Either party may terminate the Agreement upon provision of thirty (30) days prior written notice, provided that if a party commits a material default of its obligations under this Agreement and fails to cure such default within five (5) days after notice from the non-breaching party, the non-breaching party may terminate this Agreement immediately upon conclusion of the 5-day period. Upon termination of this Agreement, you shall recover all confidential information that is in the possession of your agents, affiliates, subsidiaries or subcontractors. You shall return to IHS or destroy all confidential information that you obtained or maintained pursuant to this Agreement on behalf of IHS. If the parties agree at that time that the return or destruction of confidential information is not feasible, you shall extend the protections provided under this Agreement to such confidential information, and limit further use or disclosure of the confidential information to those purposes that make the return or destruction of the confidential information infeasible. If the parties agree at the time of termination of this Agreement that it is infeasible for the you to recover all confidential information in the possession of your agents, affiliates, subsidiaries or subcontractors, you shall provide written notice to IHS regarding the nature of the infeasibility and you shall require that your agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required hereunder.

14. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to Agreement, IHS shall notify you of any actions it reasonably deems necessary to comply with such changes, and you shall promptly take such actions. In the event there is a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, either party may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues. If, within fifteen (15) days following the

notice, the parties are unable to agree upon such amendments, either party may terminate this Agreement by giving the other party at least thirty (30) days written notice.

15. Amendments. This Agreement may be amended only in writing signed by the parties.

16. Severability and Survival. If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. The obligations of the parties to the confidential information shall survive the termination of this Agreement.

17. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute the original Agreement. Please sign and fax this Agreement to Martin Tohill at **619.342.2133** or email **[draccess@imaginghealthcare.com](mailto:draccess@imaginghealthcare.com)**. Upon receipt of the signed Agreement, IHS will provide you a user name and password by telephone or email.

Physician Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

Specialty: \_\_\_\_\_

Office Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

License #: \_\_\_\_\_

Email: \_\_\_\_\_