



## SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

This Subcontractor Business Associate Agreement (“Agreement”) is made effective this \_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between MedView Imaging, LLC, d/b/a VegaBit Technologies (“VegaBit”), and \_\_\_\_\_ (“Subcontractor”) (each a “Party” and collectively, the “Parties”).

### RECITALS

WHEREAS, VegaBit is performing services for Medical and Dental offices, a “Covered Entity”, as defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, (“HIPAA”) and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“Secretary”), including, without limitation, the regulations codified at 45 C.F.R. Part 160 and Subparts A and E of 164 (“Privacy Rule”) and 45 C.F.R. Part 160 and Subparts A and C or 164 (“Security Rule”);

WHEREAS, Subcontractor is performing certain services for or on behalf of VegaBit pursuant to an agreement between Subcontractor and VegaBit (the “Underlying Agreement”) and in performing said services, Subcontractor may create, receive, maintain or transmit Protected Health Information, including Electronic Protected Health Information (collectively “PHI”), as defined by HIPAA;

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by VegaBit to Subcontractor, or received or created by Subcontractor, when providing services in compliance with HIPAA, including the HIPAA Privacy and Security Rule and the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. Part 164 Subpart D, as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of 2009, and other applicable state and federal laws, all as amended from time to time; and

WHEREAS, VegaBit is required under HIPAA to enter into a business associate agreement with Subcontractor that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated as an integral part of this Agreement, and of the mutual promises contained herein and other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** Except as otherwise defined herein, terms used in this Agreement shall have the definitions set forth in the Privacy Rule and Security Rule.
2. **Permitted Use and Disclosure of PHI by Subcontractor.**
  - (a) *Generally.* Subcontractor may only Use or Disclose PHI as necessary to perform the services set forth in the Underlying Agreement and as permitted in this Agreement.
  - (b) *Required by Law.* Subcontractor may Use or Disclose PHI as Required by Law.

(c) *De-identified Information.* Subcontractor may create de-identified information that may be used and disclosed by Subcontractor as Subcontractor deems appropriate, in compliance with 45 C.F.R. §164.514(a)-(c).

(d) *Data Aggregation.* Subcontractor may use PHI to provide Data Aggregation services to VegaBit. With prior written approval of VegaBit, Subcontractor may also use PHI to create, use and disclose a Limited Data Set consistent with the Privacy Rule and Security Rule.

(e) *Management and Administration.* Subcontractor may use PHI for the proper management and administration of Subcontractor or to carry out the legal responsibilities of Subcontractor.

### **3. Obligations of Subcontractor.**

(a) *Prohibited Uses and Disclosures.* Subcontractor shall not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law. Subcontractor shall not Use or Disclose PHI in a manner that would violate the Privacy Rule if done by VegaBit, except for the specific Uses and Disclosures set forth herein.

(b) *Subcontractors.* In accordance with 45 C.F.R. §§ 164.502(e)(1) and 164.308(b)(2), Subcontractor shall enter into written agreements with its agents or subcontractors to ensure that any agents or subcontractors that create, receive, maintain or transmit PHI on behalf of Subcontractor agree to restrictions and conditions no less restrictive than those that apply to Subcontractor in this Agreement with respect to such PHI.

(c) *Safeguards for Protection of PHI.* Subcontractor shall use appropriate administrative, technical and physical safeguards, and comply, where applicable, with the Security Rule with respect to any PHI that constitutes Electronic Protected Health Information, to prevent Use or Disclosure of PHI other than as provided for by this Agreement.

(d) *Authorized Access to PHI.* To the extent Subcontractor has PHI in a Designated Record Set, Subcontractor agrees to provide VegaBit and/or Covered Entity access to such PHI within fifteen (15) days of receipt of a request from VegaBit on behalf of Covered Entity, in order for Covered Entity to respond in accordance with the requirements of 45 C.F.R. § 164.524. If Subcontractor receives a request from an Individual for access to PHI, Subcontractor shall forward such request to VegaBit as soon as reasonably practicable.

(e) *Amendments to PHI.* To the extent Subcontractor has PHI in a Designated Record Set, Subcontractor agrees to make any amendment(s) to such PHI within thirty (30) days of receipt of a request from VegaBit on behalf of Covered Entity, pursuant to 45 C.F.R. § 164.526. In the event any Individual requests an amendment of PHI directly to the Subcontractor, Subcontractor shall forward such request to VegaBit as soon as reasonably practicable. Covered Entity shall be exclusively responsible for responding to all requests by Individuals for amendment to their PHI in accordance with HIPAA.

(f) *Accounting of Disclosures.* Within thirty (30) days of receipt of a request from VegaBit on behalf of Covered Entity, for an accounting of Disclosures of PHI, Subcontractor shall make available to VegaBit the information required to provide an accounting of Disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528.

(g) *Availability of Internal Practices, Books, and Records.* Subcontractor agrees to make Subcontractor's internal practices, books, and records available to the Secretary in accordance with 45 C.F.R. § 160.310 for purposes of the Secretary determining Covered Entity's compliance with HIPAA.

(h) *Carrying out Covered Entity's or VegaBit's Obligations.* To the extent Subcontractor is to carry out one or more of Covered Entity's or VegaBit's obligations under the Privacy Rule, Subcontractor shall comply with those requirements of the Privacy Rule applicable to Covered Entity or VegaBit in performing such obligations. Notwithstanding the foregoing, the Parties acknowledge that, unless otherwise agreed upon by the Parties in writing, Subcontractor has no obligations to carry out any of Covered Entity's or VegaBit's obligations under the Privacy Rule.

(i) *Minimum Necessary.* Subcontractor shall limit Subcontractor's Use and Disclosure of PHI to the Minimum Necessary pursuant to 45 C.F.R. §§164.502(b) and 164.514 of the Privacy Rule.

#### **4. Obligations of VegaBit.**

(a) *Prohibited Uses and Disclosures.* VegaBit shall Use and Disclose PHI only as permitted by HIPAA. VegaBit shall not authorize, request or require Subcontractor to Use or Disclose PHI in any manner that would violate HIPAA if the Use or Disclosure were carried out by VegaBit.

(b) *Minimum Necessary.* VegaBit agrees to make reasonable efforts to limit the Disclosure of PHI to Subcontractor to the Minimum Necessary for Subcontractor to perform the services.

(c) *Notice of Limitations, Changes, and Restrictions.* VegaBit shall notify Subcontractor of any of the following notifications received by VegaBit from Covered Entity: (i) any limitations contained in Covered Entity's notice of privacy practices; (ii) any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her PHI; or (iii) any restrictions on the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such limitation, change, or restriction may affect Subcontractor's Use or Disclosure of PHI.

**5. Breach Notification.** Subcontractor shall report to VegaBit within ten (10) days any Use or Disclosure of PHI not provided for in this Agreement or the Underlying Agreement of which Subcontractor becomes aware, including any successful Security Incidents or any Breach of Unsecured PHI in accordance with 45 C.F.R. § 164.410.

#### **6. Term and Termination.**

(a) *Term.* This Agreement shall be effective as of the Effective Date set forth above and shall continue under termination of this Agreement or until the Underlying Agreement is terminated.

(b) *Termination for Cause.* In the event either Party becomes aware that the other Party has materially breached this Agreement, the non-breaching Party may request in writing that the breaching Party cure the breach. If the breach is not cured within fifteen (15) days of the written notice, the non-breaching party may terminate this Agreement.

(c) *Obligations of Subcontractor Upon Termination.* Upon termination of this Agreement for any reason, Subcontractor shall return or destroy all PHI received from VegaBit, or created or received by Subcontractor on behalf of VegaBit. Subcontractor shall certify in writing to VegaBit that such PHI has been destroyed and shall not retain any copies of such PHI. In the event that Subcontractor determines that returning or destroying the PHI is unfeasible, Subcontractor shall provide to VegaBit notification of the

conditions that make return or destruction unfeasible. Subcontractor shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI unfeasible, for so long as Subcontractor maintains such PHI. The obligations of Subcontractor under this Subsection shall survive the termination of this Agreement.

7. **Indemnification.** Subcontractor shall indemnify, defend, and hold harmless VegaBit from and against any and all claims, suits, demands, judgments, losses, fines, penalties, damages, liabilities, costs, attorney's fees and expenses of any nature, kind or description (collectively "Claims") arising out of, caused by or resulting from any act or omission on the part of Subcontractor or Subcontractor's officers, directors, employees or agents (its "Representatives"), or arising from or related to any breach of or failure to perform any obligation contained in this Agreement by Subcontractor or its Representatives. Without limiting the foregoing, Subcontractor shall be responsible for all costs and expenses incurred by VegaBit or Covered Entity in notifying individuals, the media, and the Secretary of the Department of Health and Human Services of a breach where the breach was caused by Subcontractor or its Representatives and the PHI was maintained, used, or disclosed by Subcontractor or its Representatives when the breach occurred. The indemnification obligations shall survive termination and expiration of this Agreement.

8. **Miscellaneous.**

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

(b) *Amendment.* No amendment, change, or modification of this Agreement shall be valid unless set forth in writing and signed by the Parties. The Parties agree to take such action as is necessary to amend or further amend, as the case may be, this Agreement from time to time as is necessary for the Parties to comply with the applicable law, including but not limited to the requirements of HIPAA, HITECH, and regulations promulgated thereunder.

(c) *No Third-Party Rights.* The terms of this Agreement are not intended, nor should they be construed, to grant any rights to any parties other than Subcontractor and VegaBit.

(d) *Relationship of Parties.* It is expressly agreed that the Parties shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture, or agency. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of the other Party.

(e) *Notices.* Notices required under this Agreement shall be deemed given: (i) when delivered in writing personally; (ii) when sent by confirmed telex or facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses designated by both Parties (or such other address as either Party may subsequently designate).

(f) *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit VegaBit and Subcontractor to comply with the requirements of HIPAA and HITECH, and other applicable law. In the case of conflict between this Agreement and any other written agreement between the Parties, the language of this Agreement shall control with regard to the subject matter herein. Notwithstanding the foregoing, any limitation or exclusion of damages provisions in the Underlying Agreement shall be applicable to and control over any contrary provision of this Agreement.

(g) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Florida, without regard to choice of law rules.


(h) *Entire Agreement.* This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements, commitments, or understandings with respect thereto as of the Effective Date.

(i) *Counterparts.* This Agreement may be executed in one or more counterparts, including by facsimile or electronic delivery, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effect as of the Effective Date.

VegaBit:

VegaBit Technologies, LLC

By:   
Its: Head Technician

Subcontractor

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