BUSINESS ASSOCIATE AGREEMENT

 This Business Associate Agreement ("Agreement") is made and entered into on \_\_\_\_\_\_\_\_\_\_\_\_("Effective Date"), by and between **Name**, itself a Business Associate to each separate and distinct Prestige HC corporation listed in Exhibit "B" to the Parties' Service Agreement ("Covered Entity"), and **Avante Physician Services (**Business Associate"). Where and when appropriate throughout this Agreement, Covered Entity and Business Associate may be referred to individually as a "Party" and collectively, the "Parties."

**RECITALS:**

**WHEREAS**, this Agreement is made and entered into between the Parties as part of, and in conjunction with, the Parties' Service Agreement ("Underlying Agreement").

 **WHEREAS**, the Parties desire to enter into this Agreement in order to comply with the business associate agreement requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations;

 **WHEREAS**, the Parties' business relationship may require Covered Entity to disclose to Business Associate confidential patient information that must be afforded special protection in accordance with the standards for privacy and security of individually identifiable Protected Health Information under HIPAA, as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act of 2010, and all implementing regulations issued thereunder at 45 CFR Parts 160, 162, and 164 (the "Privacy and Security Regulations"), as currently written, and as may be amended from time to time; and,

 **WHEREAS**, this Agreement is intended to set forth satisfactory assurances that Business Associate will appropriately safeguard the privacy and security of such Protected Health Information and will comply with the breach notification requirements of the Privacy and Security Regulations.

 **NOW, THEREFORE**, in consideration of the Parties' continuing obligations under HIPAA, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

# **Definitions.** Capitalized terms used in this Agreement, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Regulations.

## **Breach.** "Breach", when capitalized, has the same meaning as this term has in 42 U.S.C. § 17921(1) and 45 CFR § 164.402 (including all of its subsections); with respect to all other uses of the word "breach" in this Agreement, the word shall have its ordinary contract meaning.

## **Designated Record Set.** "Designated Record Set" has the same meaning as this term has in 45 CFR. § 164.501.

## **Electronic Protected Health Information.** "Electronic Protected Health Information" or "ePHI" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to information that Business Associate creates, accesses or receives on behalf of Covered Entity.

## **HITECH Act.** "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, effective February 17, 2009.

## **Individual.** "Individual" has the same meaning as this term has in 45 CFR § 160.103.

## **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A, D and E, as currently in effect.

## **Protected Health Information.** "Protected Health Information" or "PHI" has the same meaning as this term has in 45 CFR § 160.103, limited to the information received by Business Associate from, or created, received, maintained or transmitted by Business Associate on behalf of, Covered Entity. PHI includes ePHI.

## **Required By Law.** "Required By Law" shall have the same meaning as this term has in 45 CFR § 164.103.

## **Secretary.** "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or the Secretary's designate.

## **Security Rule.** "Security Rule" means the Standards for Security for the Protection of Electronic Protected Health Information, as codified at 45 CFR Parts 160 and 164, Subpart C.

## **Unsecured Protected Health Information.** "Unsecured Protected Health Information" shall have the same meaning as the term has in 42 U.S.C. § 17932(h) and 45 CFR § 164.402, limited to the information received by Business Associate from, or created, received, maintained or transmitted by Business Associate on behalf of, Covered Entity.

# **Obligations and Activities of Business Associate.** Business Associate acknowledges and agrees that it is considered a "Business Associate"as defined by HIPAA. As a Business Associate of Covered Entity, Business Associate shall, in addition to complying with the terms of this Agreement, comply with the following and any state provisions that are more restrictive:

## Disclosure. Business Associate shall not use or further Disclose PHI other than as permitted or required by this Agreement, to perform Services under the Underlying Agreement or as Required by Law.

## Safeguards. Business Associate shall use safeguards that are appropriate and sufficient to prevent use or disclosure of PHI other than disclosures permitted or required by this Agreement. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of ePHI.

## Reporting. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted or required by this Agreement and any Security Incident of which it becomes aware.

## Agents and Subcontractors. Business Associate shall ensure that any and all agents and subcontractors to whom it provides PHI as permitted or required under this Agreement agree, in writing, prior to the disclosure of such PHI, to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including without limitation the provisions of this Section.

## Electronic Data Security. Business Associate agrees to comply with the requirements of 45 CFR §§ 164.308, 164.312, and 164.316 to the same extent such requirements apply to Covered Entity.

## Patient Rights.

 (i) Patient Right to Review. If any Individual requests access to his or her

own PHI from Business Associate, Business Associate shall, within two (2) calendar days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle the request; provided that if Covered Entity so requests and Business Associate maintains a Designated Record Set, Business Associate shall make such PHI available directly to that Individual, as directed by Covered Entity, and shall promptly provide Covered Entity with a written report detailing its handling of such request.

 (ii) Patient Right to Amend. If Business Associate maintains PHI in a Designated Record Set, then within ten (10) calendar days of receipt of Covered Entity's request, Business Associate shall incorporate amendments into the PHI as directed by Covered Entity. If any Individual submits to Business Associate a request to amend his or her own PHI, Business Associate shall, within two (2) calendar days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle such request; provided, however, that, if Covered Entity so requests and Business Associate maintains a Designated Record Set, Business Associate shall respond to the Individual for purposes of incorporating the amendment, as directed by Covered Entity, and shall promptly provide Covered Entity with a written report detailing its handling of such request.

(iii) Patient Right to Request Accounting. If Business Associate maintains PHI in a Designated Record Set, then within ten (10) calendar days of Covered Entity's notice to Business Associate of a request from an Individual for an accounting of disclosures of his or her PHI, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 CFR § 164.528. If an Individual submits to Business Associate a request for an accounting, Business Associate shall, within two (2) calendar days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle such request; provided, however, that (1) if Covered Entity requests, Business Associate shall respond directly to the Individual for purposes of providing the accounting, as directed by Covered Entity, and shall promptly provide Covered Entity with a written report of the details of its handling of such requests, and (2) Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section. In addition, in accordance with the HITECH Act, Business Associate acknowledges that if disclosures are made by Business Associate through the use of an electronic health record, Individuals have the right to receive an accounting of disclosures made for treatment, payment, and health care operations during the previous three (3) years, thus Business Associate agrees that:

1. If Covered Entity acquired an electronic health record before January 1, 2009, then effective January 1, 2014, Business Associate must maintain a list of disclosures made for treatment, payment or operations purposes for a minimum of three (3) years from the date of such disclosure; or,
2. If Covered Entity acquired an electronic health record after January 1, 2009, then effective January 1, 2011, Business Associate must maintain a list of disclosures made for treatment, payment or operations purposes for a minimum of three (3) years from the date of such disclosure.

(iv) Accounting to Covered Entity. To assist Covered Entity in complying with the patient rights provisions of HIPAA, Business Associate shall, at any time during this Agreement, make PHI in its possession available to Covered Entity within ten (10) business days of Covered Entity's request.

1. Record Keeping. Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

## Audit. Business Associate shall 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 Covered Entity available to the Secretary of Health and Human Services, upon request, for purposes of determining and facilitating Covered Entity's compliance with HIPAA.

## Mitigation. Business Associate shall promptly 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 this Agreement, the Privacy Rule, the Security Rule, or other applicable federal or state law.

## Uses Permitted By Law. As permitted by the Privacy Rule, Business Associate may use or disclose PHI: (a) as is necessary for the proper management and administration of Business Associate's organization, (b) to provide data aggregation services relating to the health care services of the Covered Entity; and (c) to carry out the legal responsibilities of Business Associate; provided, however, that any permitted disclosure of PHI to a third party must be either Required By Law or subject to reasonable assurances obtained by Business Associate from the third party that the PHI will be held confidentially, and securely, and used or disclosed only as Required By Law or for the purposes for which it was disclosed to such third party, and that any breaches of confidentiality of the PHI which become known to such third party will be immediately reported to Business Associate. Business Associate shall follow the procedures set forth herein for Disclosures of PHI Required By Law.

## Breach. If Business Associate has knowledge or a reasonable belief that a Breach of Unsecured Protected Health Information has occurred or may have occurred, Business Associate shall promptly (but in no event later than thirty (30) days after it has knowledge that a Breach or reasonable belief that a Breach has or may have occurred) notify the Covered Entity in accordance with the requirements of 45 CFR § 164.410. For avoidance of doubt, Business Associate shall notify Covered Entity if it has knowledge of a potential Breach so that Covered Entity may determine and confirm whether a Breach has occurred. Such notification shall include, to the extent possible, the identification of each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, used or disclosed during the Breach, along with any other information that the Covered Entity will be required to include in its notification to the Individual, the media and/or the Secretary, as applicable, including, without limitation, a description of the Breach, the date of the Breach and its discovery, the types of Unsecured Protected Health Information involved and a description of the Business Associate's investigation, mitigation, and prevention efforts.

## Remuneration in Exchange for PHI. Except as permitted by the HITECH Act or regulations issued by the Department of Health and Human Services ("DHHS")in accordance with the HITECH Act, and as of the effective date of such regulations, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.

 **2.12** Minimum Necessary. Business Associate agrees to follow any guidance issued

by DHHS regarding what constitutes "minimum necessary" with respect to the use or disclosure of PHI. Until the time that any such guidance is issued, Business Associate shall limit its use or disclosure of PHI, to the extent practicable, to the limited data set (as defined in section 45 CFR § 164.514(e)(2)) or, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.

## Marketing. Effective February 17, 2010, unless otherwise permitted in the Parties' Underlying Agreement referenced on Page 1 of this Agreement, Business Associate must obtain or confirm that Covered Entity has obtained an authorization for any use or disclosure of PHI for marketing, unless the marketing communication is made without any form of remuneration (i) to describe medical services or products provided by Covered Entity or Business Associate; (ii) for treatment of the Individual; or (iii) for case management or care coordination for the Individual or to direct or recommend alternative treatments, therapies, providers or settings.

# **Obligations of Covered Entity.**

## Restrictions on Protected Health Information. Covered Entity shall notify Business Associate of any restriction(s) relating to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

## Permissible Requests. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for management and administration and legal responsibilities of the Business Associate, and in accordance with the provisions of this Agreement.

## Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

## Changes in Individual Permission. Covered Entity has obtained all necessary consents and permissions from Individuals related to the use and disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent such changes may affect Business Associate’s use or disclosure of Protected Health Information.

# **Remedies in Event of Breach.** Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in Section 2 of this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Section 2 of this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Section 2. The remedies contained in this Section 4 shall be in addition to, and do not supersede, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

# **Term and Termination.**

## Term. The Term of this Agreement shall begin on the Effective Date, and shall terminate when all of the PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy all of the PHI, protections are extended to such information in accordance with the termination provisions of this Section.

## Termination.

1. By Covered Entity. Upon Covered Entity's knowledge of a material

 breach by Business Associate of this Agreement, Covered Entity

 shall:

1. Terminate this Agreement and the Underlying Agreement upon thirty (30) days' notice if Covered Entity determines that Business Associate has violated a material term of this Agreement if, following Covered Entity's notification to Business Associate of the material breach, Business Associate is unable or unwilling to take steps to cure the breach within such thirty (30) day period. In the event of such a cure, this Agreement shall remain in full force and effect;
2. Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure is feasible, report the violation to the Secretary.
4. By Business Associate. Upon Business Associate's knowledge of a material breach by Covered Entity of this Agreement, Business Associate shall:
5. Terminate this Agreement and the Underlying Agreement upon thirty (30) days' notice if Business Associate determines that Covered Entity has violated a material term of this Agreement if, following Business Associate's notification to Covered Entity of the material breach, Covered Entity is unable or unwilling to take steps to cure the breach within such thirty (30) day period. In the event of such a cure, this Agreement shall remain in full force and effect;
6. Immediately terminate this Agreement and the Underlying Agreement if Covered Entity has breached a material term of this Agreement and cure is not possible; or
7. If neither termination nor cure is feasible, report the violation to the Secretary.

## Return on Termination. At termination of the Agreement, to the extent feasible, Business Associate shall return or destroy all PHI that Business Associate still maintains in any form and retain no copies of the PHI. If the return or destruction of such PHI is not feasible, Business Associate shall extend the protections of this Agreement to the remaining information and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible.

## Survival. The terms of this Section shall survive the termination or expiration of this Agreement.

# **Required Disclosure.** If Business Associate is confronted with legal action to disclose any PHI, Business Associate shall promptly notify and assist Covered Entity (at Business Associate's expense) in obtaining a protective order or other similar order, and shall thereafter disclose only the minimum amount of PHI that is required to be disclosed in order to comply with the legal action, whether or not a protective order or other type of order has been obtained.

# **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity and its directors, trustees, officers, agents, contractors, and employees (collectively, the "Covered Entity Indemnified Parties") against any and all losses, causes of action, liabilities, costs, expenses, claims, and damages, including all expenses of litigation, reasonable attorneys' fees, and court costs (collectively, the "Liabilities"), which the Covered Entity Indemnified Party(ies) may at any time suffer or sustain or become liable for, arising out of or related to Business Associate's negligent or willful act(s) or failure(s) to act, or the negligent or willful act(s) or failure(s) to act of Business Associate's directors, trustees, officers, agents, contractors or employees, in connection with the subject matter of this Agreement. This provision shall not apply to Liabilities arising out of or related to any intentional misconduct or wrongdoing of any Covered Entity Indemnified Party(ies). This provision shall survive termination of this Agreement.

# **Amendment to Agreement required by changes in law.** The Parties acknowledge that the HITECH Act requires the Secretary to promulgate additional regulations and interpretative guidance that is not available at the time of executing this Agreement. Therefore, the Parties agree to take such action to amend this Agreement from time to time as is necessary to comply with the requirements of HIPAA, the HITECH Act, the Privacy and Security Regulations, and any other applicable law.

# **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, the HITECH Act, the Privacy and Security Regulations, and any other applicable law. A reference in this Agreement to a section of law means the section in effect and for which compliance is required. Any prospective amendment to the laws and regulations referenced in this Agreement prospectively amends this Agreement to incorporate said changes.

# **Compliance with Applicable Laws.**  The Parties agree to comply with applicable laws, regulations, rulings, and standards, and amendments thereto, of all entities that regulate, license, govern, and/or accredit the Parties, including, but not limited to, federal, state, and local government agencies.

# **Underlying Agreement.** Except as specifically required to implement the purposes of this Agreement, and except to the extent inconsistent with this Agreement, all terms of the Underlying Agreement shall remain in full force and effect. In the event of a conflict between the terms of the Underlying Agreement and this Agreement, this Agreement shall control. This Agreement, along with the Underlying Agreement, constitutes the entire agreement between the Parties and supersedes all prior understandings, communications, and agreements between the Parties, whether verbal or written, with respect to such subject matter.

# **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 the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

# **Ownership.** Covered Entity shall be and remain the sole and exclusive owner of its PHI.

# **Red Flag Rules.** To the extent applicable and upon the effective date, as stated by the Federal Trade Commission (the "FTC"),and thereafter, if Business Associate performs services for Covered Entity with respect to Covered Accounts as such term is defined in the Identity Theft Red Flag rules published by the FTC (the "Rules"),Business Associate shall also be deemed a "Service Provider"of Covered Entity and as to such Covered Accounts, Business Associate shall: (a) perform its activities under the Agreement in accordance with reasonable policies and procedures of Business Associate designed to detect, prevent, and mitigate the risk of identity theft, as required of a Service Provider under the Rules (the "Program"); and (b) promptly report to Covered Entity, but in no event later than five (5) days after learning of any specific Red Flag Incidents (as such term is defined in the Rules) which Business Associate detects as to Covered Accounts of Covered Entity pursuant to the Program and respond to, or reasonably assist Covered Entity in responding to, such reported Red Flag.

# **Amendments.** This Agreement may not be amended or modified in any respect whatsoever except by a written instrument signed by the Parties.

# **Waiver.** Failure of either Party to insist upon the strict and punctual performance of any provision hereof shall not constitute waiver of, or estoppel against asserting the right to require such performance, nor should a waiver or estoppel in one case constitute a waiver or estoppel with respect to a later breach whether of similar nature or otherwise.

# **Non-Assignability.** No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

# **Severability.** Nothing contained in this Agreement shall be construed to require the commission of an act contrary to law, and whenever there is any conflict between any provision of this Agreement and any statute, law, ordinance or regulation, the latter shall prevail. In such event, and in any case in which any provision of this Agreement is determined to be in violation of a statute, law, ordinance or regulation, the affected provision(s) shall be limited only to the extent necessary to bring it within the requirements of the law and, insofar as possible under the circumstances, to carry out the purposes of this Agreement. The other provisions of this Agreement shall remain in full force and effect, and the invalidity or unenforceability of any provision hereof shall not affect the validity and enforceability of the other provisions of this Agreement, nor the availability of all remedies in law or equity to the Parties with respect to such other provisions.

# **Headings.** The section headings of this Agreement are for reference and convenience only and in no way define, limit or describe the scope or intent of this Agreement.

# **Governing Laws; Venue.** This Agreement shall be governed by and interpreted under the laws of the State of Florida without regard to Florida's choice-of-law rules. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement shall be brought in the courts of the State of Florida, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding. Venue for any litigation shall be where Covered Entity is located.

# **Notice.** Any and all notice(s) required to be provided to any Party to this Agreement shall be in writing and shall be considered effective upon personal delivery (with hand receipt), upon deposit with the U.S. Postal Service by certified mail, return receipt requested, or upon receipt from an overnight courier service (i.e., UPS, Federal Express), and addressed to the Party(ies), which address may be amended in writing, as follows:

 If to Covered Entity: With Copy to:

 Prestige HC

 Attn: Administrator

 *See* Facility Address List in Exhibit "B"

If to Business Associate:

 Avante Physician Services

 5900 Lake Ellenor Dr.

Suite 700C

 Orlando FL, 32809

 Attn: Legal Department

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# **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

# **Review and Acceptance.** Business Associate acknowledges and agrees that this Agreement is not binding on the Parties unless signed by Covered Entity's President or Vice-President, or designee after legal review and acceptance, as evidenced by his or her signature below.

IN WITNESS WHEREOF, the Parties, by their duly sworn authorized representatives, have entered into this Agreement as of the effective date and year first written above.

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| --- | --- | --- |
| **COVERED ENTITY:****Prestige HC., on behalf of each** **separate and distinct Prestige HC Cooperation** **listed in Exhibit "B" to the Service Agreement** |  | **BUSINESS ASSOCIATE:****Avante Physician Services**  |
| Signature: |  |  | Signature: |  |
| Printed Name: |   |  | Printed Name: |  Kimberly Biegasiewicz |
| Title: |   |  | Title: |  President/CEO  |
| Date: |  |  | Date: | 03/28/2024 |

**Exhibit B**

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

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