

## **DERMATOLOGY BILLING ASSOCIATES, INC. CONTRACT**

THIS BILLING AGREEMENT, (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between DERMATOLOGY BILLING ASSOCIATES, INC., ("DBA") and \_\_\_\_\_("CLIENT").

WHEREAS, DBA is engaged in the business of billing for dermatological medical practices; and

WHEREAS, CLIENT seeks to utilize the billing services of DBA exclusively as part of its dermatology practice pursuant to the terms and subject to the conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. COMMENCEMENT DATE. Billing activities are scheduled to begin on \_\_\_\_\_.
2. TERM. This Agreement shall continue for a period of three years after Commencement Date.
3. RENEWAL. This Agreement shall automatically renew for successive two-year periods unless written notice is given by the canceling party at least ninety (90) days prior to the last day of the term then in effect.
4. SERVICES. DBA will provide billing services to CLIENT for the term of this Agreement in accordance with the Plan Specifications and Costs document attached hereto and made a part hereof as Addendum "A." DBA will bill CLIENT charges (a) in a manner consistent with applicable federal, state and local laws and regulations and (b) within the policies and procedures of third party payers, that are made known by CLIENT or third parties to DBA in writing. DBA does not provide collection services for CLIENT's billings and accounts receivable in the event of payment delinquencies by payers.
5. COMPENSATION. In addition to other amounts specified herein, CLIENT shall pay DBA an amount equal to eight percent (8.0%) of DBA's net receipts of CLIENT's billings per month ("Base Fee"). Net receipts is defined as the total sum of all monies collected by DBA each month for all services provided to CLIENT, including, but not limited to, monies associated with payment for services billed to all primary insurance, Federal Medigap policies, all patient-owed balances, non-Medigap secondary insurance billings, and posting time of service collections. If CLIENT submits charges to Medicaid in either California, Florida, or Nevada, then CLIENT shall pay an amount equal to \$5.00 per claim processed, in lieu of the eight percent fee. The minimum monthly Base Fee due to DBA from CLIENT shall be \$1,000.00.

In addition to the Base Fee, CLIENT will reimburse DBA for:

- a) The cost of any lock box expenses in the event that CLIENT's lock box is maintained by DBA;
- b) The cost of providing superbills/encounter forms for CLIENT after the initial 3-month period;
- c) Any additional negotiated reports or services beyond the standard services as listed in Addendum A as requested by CLIENT; and
- d) The cost of mailing materials, including, but not limited to, daily batches and related support material, shall be incurred exclusively by CLIENT, and shall not be the responsibility of DBA.

6. ANTICIPATED CHARGES. CLIENT intends to provide average monthly billings for billing and collection services by DBA in the amount of \$ \_\_\_\_\_ dollars.

The anticipated Base Fee, based upon the Anticipated Charges and previous receipts history provided by CLIENT to DBA, is estimated to be \$ \_\_\_\_\_ dollars per month.

CLIENT and DBA understand that the Anticipated Charges have been calculated based on historical averages of receipts and may fluctuate based upon the number of services provided by CLIENT to DBA for billing, patient deductibles, and insurance company reimbursement rates. CLIENT and DBA understand net receipts for billings will take approximately 90 to 120 days from the start of this Agreement to reach the anticipated Base Fee.

Notwithstanding the foregoing, in the event that:

- a) CLIENT fails to disclose to DBA, at or prior to the time this Agreement is executed, information relating to CLIENT's practice that, if disclosed, would have materially increased the costs of billing and receipt of payment efforts incurred by DBA; or
- b) CLIENT materially changes fundamental aspects of its practice (such as number of providers, its practice sites, the type of services provided, its payer mix, quality or type of demographic information available, method of documenting services provided or the like), DBA may propose an adjustment to the Base Fee in writing (the "Adjustment Proposal"). For the thirty (30) day period after CLIENT's receipt of the Adjustment Proposal (the "Discussion Period"), DBA shall be available to discuss the basis for the amount of the proposed adjustment with CLIENT. If CLIENT agrees to the proposed adjustment, this Agreement will be amended to reflect the new Base Fee. If, on

or before the end of the Discussion Period, CLIENT has not accepted the proposed adjustment or the parties have not otherwise agreed as to an adjustment to the Base Fee, DBA may terminate this Agreement on ninety (90) days advance written notice; or

c) Changes in the Base Fee under clause (a) shall be retroactively effective to the Effective Date; changes in the Base Fee under clause (b) shall be effective as of the end of the Discussion Period.

7. **BANK LOCK BOX.** Medicare suggests that physicians who use a billing service use a bank lock box. Accordingly, CLIENT agrees to establish a bank lock box account at a bank of CLIENT's choice. DBA will have Explanation of Medical Benefits ("EOMB's") and checks from payers forwarded to the bank lock box for processing. Original checks will be deposited by the bank directly into CLIENT's account. Should CLIENT be unable to establish a bank lock box account, DBA may assist CLIENT with establishing a bank lock box account with DBA's bank, in CLIENT's name. Copies of checks and EOMBs will be forwarded by the bank to DBA for processing and accounting. CLIENT is responsible for all costs associated with a bank lock box. DBA will have no check writing or withdrawal capabilities for any type of account established on behalf of CLIENT.
8. **PAYMENT TERMS.** CLIENT shall receive a monthly billing statement from DBA reflecting amounts which CLIENT shall pay DBA. Billing statements are sent via overnight priority mail. Payment is deemed paid as of the date payment is received by DBA. If the monthly DBA statement is not paid within ten (10) calendar days of receipt, CLIENT shall pay a late charge equal to ten percent (10%) of amounts due and payable by CLIENT, which amount shall be added to all delinquent payments to the extent permitted by law. A payment delinquency of thirty (30) days may, at DBA's option, result in the suspension without notice of DBA's responsibilities hereunder until such time as all amounts due and payable from CLIENT to DBA (including, without limitation interest and late charges) are paid in full. CLIENT shall be solely responsible for any losses or damages associated with such a suspension of services. In addition, DBA may immediately terminate this Agreement upon the occurrence of a thirty (30) day payment delinquency by CLIENT, notwithstanding anything herein to the contrary.
9. **CONFIDENTIALITY.** All proprietary information relating to CLIENT which is revealed or disclosed to DBA shall be kept in strict confidence by DBA, its employees and agents, and shall only be disclosed to third parties as may be required by law or legal process. DBA shall be permitted to disclose such information as shall be reasonable and necessary to provide collections services to CLIENT pursuant to this Agreement.
10. **CLIENT RESPONSIBILITIES.** All clinical and charge source data and insurance forms are to be completed in an accurate and timely manner by CLIENT and provided to DBA in the format designed by DBA. DBA will provide CLIENT with a CLIENT POLICY &

PROCEDURES MANUAL during CLIENT's orientation and training session which will outline CLIENT's responsibilities in detail.

CLIENT must strictly comply with all DBA practices and procedures for the submission of billing information to DBA. CLIENT acknowledges that such a strict compliance is a condition precedent to any and all obligations of DBA.

As part of this AGREEMENT, CLIENT agrees to submit claim information in a timely manner (defined as a minimum of twice per week) to DBA for processing. Failure by CLIENT to submit work to DBA in a timely matter may result in an additional claim processing fee of \$1.00 per claim received late, which will be added to CLIENT's monthly invoice. DBA acknowledges that external factors such as weather or postal service delivery delays may result in a minor delay for work to be delivered from CLIENT's office.

Additionally, DBA reserves the right to initiate changes in its practices and procedures policies without the written or oral consent of the CLIENT. DBA shall not be liable for coding or processing any incorrect, incomplete or duplicate information received from CLIENT, or professional courtesy or insurance-only claims, nor shall DBA be liable for any loss of revenue resulting from any delay in the coding and processing of accounts due to the untimely delivery to DBA of accurate and complete billing information by CLIENT.

DBA will not be liable for unpaid claims resulting from CLIENT's failure to provide DBA with the appropriate demographic information, insurance company information, procedure and diagnosis codes, referral or authorization numbers, and necessary medical documentation. Any charge submitted to DBA by CLIENT that is missing any of the necessary billing information, or that is not provided to DBA in the required format, will be returned by DBA to CLIENT.

CLIENT is responsible for refunding all patient and insurance-owed overpayments within sixty (60) days of notification. CLIENT will also comply with state unclaimed property regulations (i.e., escheat laws). Failure to do so may result in termination of this Agreement by WCDB for cause, with applicable termination penalties as outlined in Section 15(b) of this Agreement.

11. INDEMNITY. CLIENT shall indemnify, defend and hold harmless DBA, its officers, directors, employees, agents, and shareholders against and in respect of any and all claims, settlements, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorney's fees and disbursements (including, but not limited to any attorney's fees and disbursements incident to any appeals), that DBA (its owners, officers, directors, employees and agents) may incur or suffer which arise, result from, or relate to either (i) any breach of or failure by CLIENT to perform any of its duties and/or responsibilities described in this

Agreement or in any schedule, certificate, exhibit or other instrument furnished or to be furnished by CLIENT under this Agreement, or (ii) any action (or failure to act) of CLIENT, including, without limitation, collection efforts and activities by CLIENT or third parties, noncompliance with any local, federal and state statutes, rules and regulations and all private carrier rules and regulations governing health insurance payments. CLIENT shall promptly notify DBA of the existence of any claim, demand or other matter to which CLIENT's indemnification obligations would apply, and shall give DBA a reasonable opportunity to defend the same at CLIENT's expense and with counsel of DBA's selection; provided that DBA shall at all times also have the right to fully participate in the defense at its expense. If CLIENT shall within five (5) days after such notice fail to initiate such a defense, DBA shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf, for the account, and the risk of CLIENT.

DBA will indemnify and hold harmless CLIENT against any damages or liabilities incurred by CLIENT, its employees or contractors arising out of the failure of DBA's knowing or willful violation of applicable laws and regulations.

12. **COMPLIANCE.** CLIENT and DBA each agree to establish and maintain a Medicare Compliance Program. DBA agrees to provide CLIENT with a dermatology specific compliance outline and additional educational materials to facilitate the implementation of the compliance program, including but not limited to, coding reference manuals, educational newsletters, and dermatology specific coding and compliance tools. DBA will perform a bi-annual random chart audit of twenty (20) patient encounters for each provider in CLIENT's practice.
13. **EXCLUSIVE RELATIONSHIP.** CLIENT grants DBA the exclusive right to serve as the billing service for all of CLIENT's patient billings during the term of this Agreement and each renewal hereof. No other service or in-house billing service shall be used by CLIENT, in whole or in part, during the term of this Agreement. DBA's reasonable suspicion of a violation of this provision shall entitle DBA to a full accounting, at CLIENT's expense, by an accountant of DBA's choice, of all CLIENT's financial records to determine the amount and source of monies collected by CLIENT during the period in question. DBA shall be entitled to receive any deficiency in payment by CLIENT to DBA revealed by such accounting, plus interest at the rate of twelve percent (12%) per annum (or any lower rate to the extent permitted by law) from the date of actual collection. Notwithstanding the foregoing, CLIENT may, after reasonable advance notice to DBA, itself handle billing for cosmetics and product reimbursement in-house.
14. **TERMINATION.** This Agreement can be terminated at any time on written notice for cause. For purposes of this Agreement, the term "for cause" is defined as a material breach of a term or condition hereof that is not corrected within forty-five (45) days of prior written notice describing the breach in reasonable detail, or the failure of CLIENT to pay DBA within thirty (30) days of the date any payment is due and payable from CLIENT to DBA pursuant to the terms herein.

In the event that the cause of a material breach is contested by any party, either party may request the determination for cause to be decided by Arbitration as per section 21 of this Agreement.

This Agreement may also be terminated on written notice in the event that either party becomes excluded from participation by the Medicare program; DBA becomes legally unable to provide services contemplated herein; or CLIENT becomes legally unable to provide medical services, or as otherwise specified herein.

15. **TERMINATION FEES.** The parties contemplate and intend to continue this Agreement in effect for a minimum of two years.

a) **Termination by CLIENT for Cause.** In the event that termination by CLIENT is for cause, CLIENT shall be responsible for all unpaid amounts owed DBA by CLIENT up to the effective date of termination and shall pay DBA such outstanding sums on or before the last day of service requested by CLIENT and prior to DBA's turnover of transition information and databases to CLIENT. Upon notification of termination by CLIENT for cause, DBA shall cease performing services for CLIENT and will send to CLIENT, at CLIENT's expense, a complete printout of remaining Accounts Receivable on HCFA-1500 forms and a printout of all remaining patient balances within ten (10) business days of the effective date of termination. CLIENT may receive copies of CLIENT's EOMBs in DBA's possession as of the effective date of termination by providing DBA with at least five (5) business days prior written notice. In the event that DBA had established a lock box for CLIENT in CLIENT's name, DBA agrees to forward any and all mail from the lock box to CLIENT for a period of sixty (60) days after the effective date of termination. A backup copy of CLIENT's information stored on DBA's hard drive system can be made available to CLIENT by DBA at a cost of \$2,500.00 per copy.

b) **Termination by DBA for Cause; Termination by Client other than for Cause.** If, prior to end of the term of this Agreement, DBA terminates for cause or if CLIENT terminates other than for cause, then CLIENT shall pay DBA the sum of any outstanding invoices due by CLIENT to DBA, plus liquidated damages in the amount of sixty percent (60%) of the highest actual monthly Base Fee charged CLIENT by DBA within the twelve (12) month period prior to the effective date of termination of this Agreement, times the number of months remaining in the Agreement. All amounts owed DBA under this subsection shall be paid to DBA in a single lump sum payment no later than the last day of service requested by CLIENT and prior to DBA's turnover of transition information and database to CLIENT. The parties agree that liquidated damages are an approximation of actual damages DBA would likely sustain if this Agreement were terminated, but that such damages are not readily ascertainable at this time.

16. **TERMINATION PROCEDURE.** In the event this Agreement expires or is terminated other than by CLIENT for cause, DBA will:
- a) continue to perform Services, at the then-current rates hereunder, for a period of ninety (90) days after the effective date of termination (the "Wind Down Period") for all of CLIENT's accounts receivable relating to CLIENT's charges for Medical Services rendered prior to the termination date ("Existing Accounts Receivable");
  - b) CLIENT expressly agrees to cooperate and assist DBA with its performance during the Wind Down Period and will timely report, or cause to be reported, all payments applicable to the Existing Accounts Receivable for which DBA is responsible.
  - c) CLIENT agrees to maintain lock box forwarding address to DBA during the first 45 days of the Wind Down Period.
  - d) At the end of the Wind Down Period, discontinue performing services as to CLIENT's existing Accounts Receivable;
  - e) Deliver to CLIENT at CLIENT's expense, after and conditional upon full payment to DBA of all fees, whether disputed or not, owed to DBA by CLIENT under this Agreement, a complete printout of remaining Accounts Receivable on HCFA-1500 forms and a printout of all remaining patient balances. CLIENT may receive copies of all of CLIENT's EOMBs in DBA's possession by providing DBA with at least five (5) business days prior written notice. A backup copy of CLIENT's information stored on DBA's hard drive system can be made available to CLIENT by DBA at a cost of \$2,500.00 per copy.
  - f) Except for the forgoing or for such other matters as the parties may agree to in writing, after the effective date of termination, DBA shall have no further obligations to provide Services to CLIENT under this Agreement. CLIENT may negotiate with DBA for additional transitional services or for the provision of additional data, including CLIENT Data, to be provided by DBA after the date of termination at CLIENT's additional expense.
17. **NON-EMPLOYMENT.** CLIENT agrees that neither CLIENT nor any representative of CLIENT shall make any offer of employment to an existing or former employee, consultant, contractor or other representative of DBA ("DBA Representative") without prior written consent of DBA. In the event that CLIENT hires a DBA employee or representative (whether solicited or unsolicited) during the DBA representative's employment with (or representation of) DBA, or during the two (2) year period following termination of such employment or other representation, or for a period of two (2) years following the termination of this Agreement by CLIENT with DBA, CLIENT shall immediately pay to DBA a placement fee in the amount of the DBA representative's first year's annual monetary compensation by CLIENT or the current



If to CLIENT: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Any party hereto may, from time to time, give to the other party written notice, in the manner provided herein, of some other address to which communications to such party shall be sent, in which event notices to such party shall be personally delivered or sent by certified mail to such address, return receipt requested. Notice shall be deemed effectively given hereunder when personally delivered or deposited in the United States mail, postage prepaid, certified, return receipt requested, as the case may be.

23. **CLIENT RECORDS.** Each party shall maintain its own records. DBA may elect to scan and store copies of CLIENT records (EOMBs, patient registration forms, medical notes, and correspondence) that are less than twelve (12) months in age. Upon written notice from CLIENT, DBA will transmit to CLIENT all CLIENT records that have been in DBA's possession for at least twelve (12) months via regular U.S. mail at CLIENT's sole expense. DBA will destroy all CLIENT records that have been in the possession of DBA for at least twelve (12) months via shredding or incineration upon written notice from CLIENT. In such event, DBA will provide written certification of the destruction of the CLIENT records to CLIENT. Notwithstanding the foregoing, DBA shall have the right, in its sole discretion, to destroy or otherwise dispose of all copies of CLIENT records remaining in DBA's possession for at least eighteen (18) months.
24. **OUTSOURCING.** At DBA's discretion, and subject to the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, DBA may utilize outside resources, domestic or otherwise in the performance of its duties and responsibilities as set forth by this Agreement.
25. **SURVIVAL.** The terms, conditions, obligations and covenants of this Agreement shall survive its execution by the parties hereto and the execution of contracts hereafter entered into between the parties hereto except to the extent that such transactions and contracts may be inconsistent with the Agreement.
26. **SEVERABILITY.** The invalidity or unenforceability of any particular provision of this Agreement shall not, to the extent possible, be construed and enforced in all respects as if such invalid or unenforceable provision had not been contained herein.
27. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
28. **WAIVER.** No waiver of any breach of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition of a like or different nature.

- 29. CAPTIONS. The captions used herein are inserted only as a matter of convenience and are not to be used in the interpretation of any provision hereof.
- 30. CONSTRUCTION. The fact that one of the parties hereto may have drafted or structured any provision hereof shall not be considered in construing any particular provision either in favor of, or against, such party.

IN WITNESS WHEREOF, the parties have signed this Agreement with the intention to be bound hereby on the date first above written.

\_\_\_\_\_  
 (CLIENT)

\_\_\_\_\_  
 CLIENT Signature

\_\_\_\_\_  
 Print Client Name

Title: \_\_\_\_\_

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

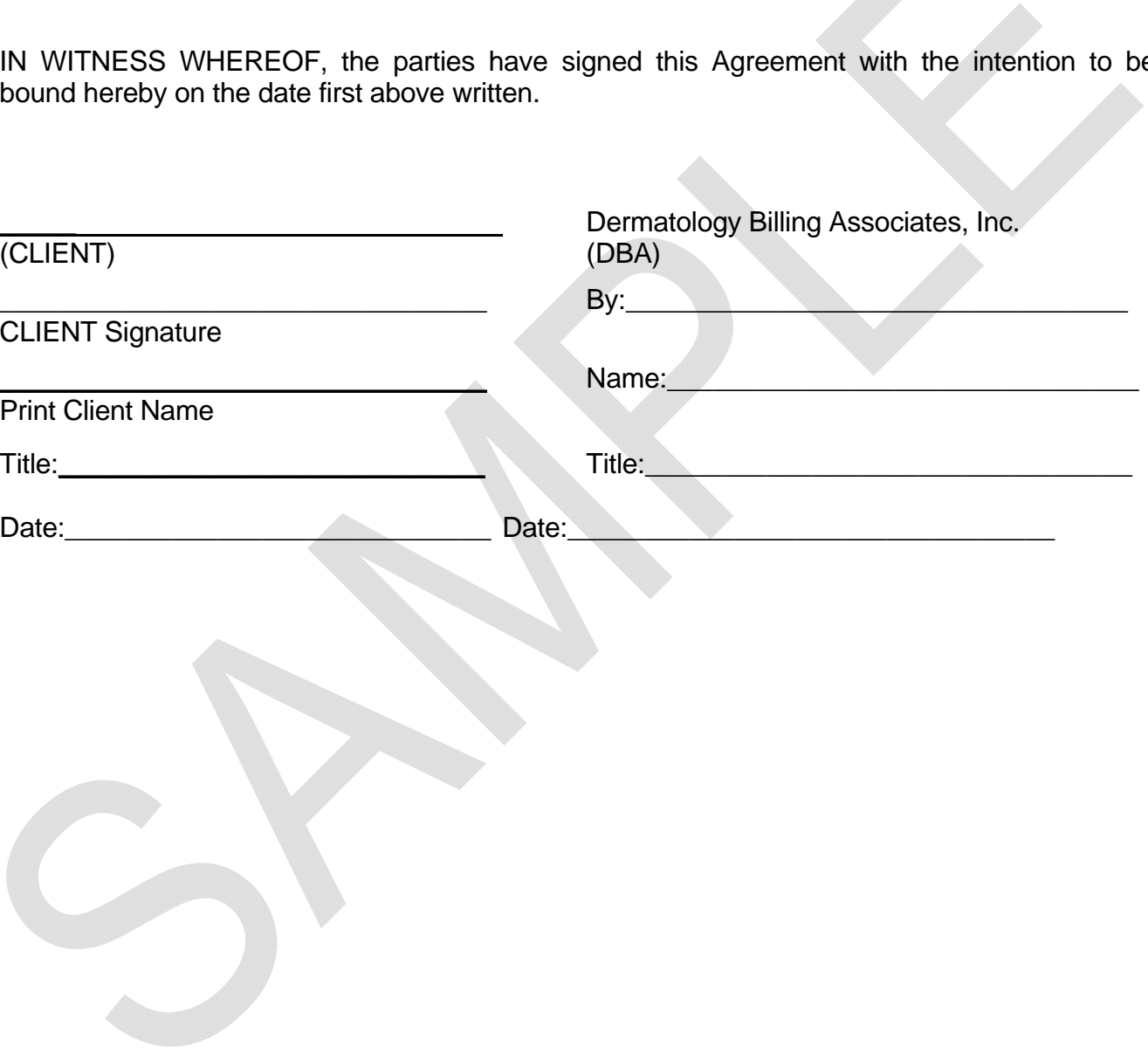
Dermatology Billing Associates, Inc.  
 (DBA)

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

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

Title: \_\_\_\_\_

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



## **ADDENDUM "A" – PLAN SPECIFICATIONS AND COSTS**

- A. PLAN: The Plan includes:
1. A one-day on-site consultation by a representative of DBA for physician/staff training.
  2. Semi-annual chart review of twenty (20) patient dates of service.
  3. Quarterly conference call by the DBA consultant and/or the DBA Director of Billing Services to review practice trends. This conference must be requested by CLIENT using the Quarterly Conference Request form.
  4. Customized Encounter Form Scan card as used by DBA for the first three (3) months only. This scan card is based on a single form. Any additional custom Superbills/Scan cards for additional locations and/or providers can be obtained at the CLIENT's expense directly from DBA's suppliers.
  5. Patient Registration Forms (Medicare and non-Medicare claims), for the first three (3) months only.
  6. Toll-free 800 number for your patients.
  7. All billing stationery as deemed necessary by DBA.
  8. A monthly report will be sent which includes:

Procedure Report (Revenue distribution report)  
Accounts Receivable Summary  
Provider(s) analysis (Journal Summary)  
Location Analysis, if required

Reports that are requested that are not part of the standard set of reports generated by the computer billing system may be created at an additional cost to CLIENT.

- B. COSTS: the plan requires an initial one-time \$5,000 non-refundable setup charge for the first physician employed by CLIENT. An additional \$750 will be charged for each satellite office and each additional provider, including Physicians, Physician's Assistants (PA) and Nurse Practitioners (NP).

CLIENT initials: \_\_\_\_\_

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, effective \_\_\_\_\_, 2008 ("Effective Date"), is entered into by and between **Dermatology Billing Associates, Inc.** the "Business Associate") and \_\_\_\_\_, a physician or physician group licensed to practice medicine in the State of \_\_\_\_\_ (the "Covered Entity") (each a "Party" and collectively the "Parties").

**WHEREAS**, Covered Entity is required to comply with the Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. §§ 160.101-160.312; 164.102-164.534) ("Privacy Regulations") as promulgated by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and,

**WHEREAS**, the Covered Entity has engaged the Business Associate to perform "Services" as defined below; and,

**WHEREAS**, in the performance of the Services, the Business Associate must use and/or disclose Protected Health Information ("PHI"), as that term is defined in Section 164.501 of the Privacy Regulations, received from or transmitted to the Covered Entity; and,

**WHEREAS**, the Parties are committed to complying with the Privacy Regulations;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties enter into this Business Associate Agreement ("Agreement").

1. **SERVICES.**

Business Associate provides billing services for the Covered Entity ("Services"). In the course of providing the Services, the use and disclosure of PHI between the Parties may be necessary.

2. **PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE.**

Unless otherwise specified herein and provided that such uses or disclosures are permitted under state and federal confidentiality laws, the Business Associate may:

- a. use the PHI in its possession to the extent necessary to perform the Services;
- b. disclose to its employees, subcontractors and agents the minimum amount of PHI in its possession necessary to perform the Services;
- c. Use or disclose PHI in its possession as directed in writing by the Covered Entity;

- d. use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate;
- e. disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, so long as the Business Associate represents, in writing, to the Covered Entity that (i) the disclosures are "required by law," as defined in Section 164.501 of the Privacy Regulations or (ii) the Business Associate has received written assurances from the third party regarding its confidential handling of such Protected Health Information as required in Section 164.504(e)(4) of the Privacy Regulations.
- f. aggregate the PHI in its possession with the PHI of other covered entities with which the Business Associate also acts in the capacity of a business associate so long as the purpose of such aggregation is to provide the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose PHI of Covered Entity to another covered entity unless such disclosure is explicitly authorized herein.
- g. de-identify PHI so long as the de-identification complies with Section 164.514(b) of the Privacy Regulations, and the Covered Entity maintains the documentation required by Section 164.514(b) of the Privacy Regulations, which may be in the form of a written assurance from the Business Associate. Such de-identified information is not considered PHI under the Privacy Regulations.

**3. RESPONSIBILITIES OF THE BUSINESS ASSOCIATE WITH RESPECT TO PROTECTED HEALTH INFORMATION**

The Business Associate further agrees to:

- a. use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law as defined in Section 164.501 of the Privacy Regulations;
- b. use and disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum Protected Health Information necessary to perform the Services or other activities required or permitted hereunder;
- c. develop appropriate internal policies and procedures to ensure compliance with this Agreement and use other reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI.

- d. notify the Covered Entity's designated Privacy Officer, in writing, of any use and/or disclosure of the PHI not permitted or required hereunder within three (3) days of the Business Associate's discovery of such unauthorized use and/or disclosure;
- e. develop and implement policies and procedures for mitigating, to the greatest extent possible, any negative or unintended effects caused by the improper use and/or disclosure of PHI that the Business Associate reports to the Covered Entity;
- f. provide the Covered Entity with all information the Covered Entity requests, in writing, to respond to a request by an individual for an accounting of the disclosures of the individual's PHI as permitted in Section 164.528 of the Privacy Regulations within thirty (30) days of receiving the request;
- g. upon two (2) days' written notice, allow access by the Covered Entity all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI at Business Associate's offices so that the Covered Entity may determine the Business Associate's compliance with the terms of this Agreement;
- h. make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI as requested by the Secretary of HHS for determining the Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges;
- i. require all of its subcontractors and agents that receive or use, or have access to, PHI to agree, in writing, to adhere to the same restrictions and conditions that apply to the Business Associate pursuant to this Agreement;
- j. return to the Covered Entity or destroy, within 90 days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).

4. **RESPONSIBILITIES OF THE COVERED ENTITY WITH RESPECT TO PROTECTED HEALTH INFORMATION.**

The Covered Entity hereby agrees:

- a. to advise the Business Associate, in writing, of any arrangements of the Covered Entity under the Privacy Regulations that may impact the use and/or disclosure of PHI by the Business Associate under this Agreement;
- b. to provide the Business Associate with a copy of the Covered Entity's current Notice of Privacy Practices ("Notice") required by Section 164.520 of the Privacy Regulations and to provide revised copies of the Notice, should the Notice be amended in any way;

- c. to advise the Business Associate, in writing, of any revocation of any consent or authorization of any individual and of any other change in any arrangement affecting the use and or disclosure of HI to which the Covered Entity has agreed, including, but not limited to, restrictions on use and/or disclosure of PHI pursuant to Section 164.522 of the Privacy Regulations.
- d. that Business Associate may make any use and/or disclosure of Protected Health Information as permitted in Section 164.512 with the prior written consent of the Covered Entity.

**5. REPRESENTATIONS AND WARRANTIES OF BOTH PARTIES**

Each Party represents and warrants to the other Party that:

- a. it is duly organized, validly existing, and in good standing under the laws of the state in which it is organized or licensed;
- b. it has the power to enter into this Agreement and to perform its duties and obligations hereunder;
- c. all necessary corporate or other actions have been taken to authorize the execution of the Agreement and the performance of its duties and obligations;
- d. neither the execution of this Agreement nor the performance of its duties and obligations hereunder will violate any provision of any other agreement, license, corporate charter or bylaws of the Party;
- e. it will not enter into nor perform pursuant to any agreement that would violate or interfere with this Agreement;
- f. it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition;
- g. neither the Party, nor any of its shareholders, members, directors, officers, agents, employees or contractors have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid or have been convicted, under federal or state law of a criminal offense;

- h. all of its employees, agents, representatives and contractors whose services may use or disclose PHI on behalf of that Party have been or shall be informed of the terms of this Agreement;
- i. all of its employees, agents, representatives and contractors who may use or disclose PHI on behalf of that Party are under a sufficient legal duty to the respective Party, either by contract or otherwise, to enable the Party to fully comply with all provisions of this Agreement.

Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.

## **6. TERM AND TERMINATION**

- a. This Agreement shall become effective on the Effective Date and shall continue unless and until either Party provides ninety (90) days' written notice of its intention to terminate the Agreement to the other, or the Agreement is otherwise terminated hereunder.
- b. If the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement, then at the sole discretion of the Covered Entity, it may either terminate this Agreement immediately upon written notice to the Business Associate or provide the Business Associate with written notice of the material breach and allow the Business Associate fifteen (15) days to cure such breach upon mutually agreeable terms; provided, however, that if an agreement regarding a satisfactory cure is not achieved within the fifteen (15) days, the Covered Entity may immediately terminate this Agreement upon written notice to the Business Partner.
- c. This Agreement will automatically terminate without further notice if the Business Associate no longer provides Services for the Covered Entity.
- d. Upon termination of this Agreement for any reason, the Business Associate shall:
  - recover any PHI in the possession of its agents or contractors;
  - at the option of the Covered Entity and if feasible, either return all PHI in its possession to Covered Entity or destroy all PHI in its possession;
- e. If it is determined by the Business Associate that it is not feasible to return or destroy any or all of the PHI, the Business Associate must notify the Covered Entity of the specific reasons in writing. The Business Associate must continue to honor all protections, limitations and restrictions herein with regard to the Business Associate's use and/or disclosure of PHI so retained and to limit any further uses

and/or disclosures to the specific purposes that render the return or destruction of the PHI not feasible.

- f. Further, the Business Associate shall provide written notice to the Covered Entity if it is unable, because it is not feasible, to obtain any or all of the PHI in the possession of an agent or contractor. The Business Associate shall require the agent or contractor to honor any and all protections, limitations and restrictions herein with regard to the agent's or contractor's use and/or disclosure of any PHI so retained and to limit any further uses and/or disclosures to the specific purposes that render the return or destruction of the PHI not feasible.

## **7. INDEMNIFICATION**

The Business Associate hereby agrees to indemnify, defend and hold harmless the Covered Entity and its shareholders, directors, officers, partners, members, employees, agents and/or contractors (collectively "Indemnified Party") against any losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may be imposed upon the Covered Entity by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's breach of this Agreement or from any negligence or wrongful acts or omissions, including failure to comply with the terms and requirements of the Privacy Regulations, by the Business Associate, its shareholders, directors, officers, partners, members, employees, agents and/or contractors. This obligation of the Business Associate to indemnify the Covered Entity shall survive the termination of this Agreement for any reason.

## **8. GENERAL PROVISIONS**

- a. If the Covered Entity operates under a Joint Notice of Privacy Practices ("Joint Notice"), as defined in the Privacy Regulations, then this Agreement shall apply to all entities covered by the Joint Notice as if each such entity were the Covered Entity.
- b. If the Business Associate is also a covered entity, as defined in the Privacy Regulations, then that covered entity may designate a health care component, as defined in Section 164.504 of the Privacy Regulations, which shall be considered the Business Associate hereunder.
- c. This Agreement may not be modified or amended except in a writing signed by both Parties.

- d. No waiver of any provision of this Agreement by either Party shall constitute a general waiver for future purposes.
- e. This Agreement may not be assigned by the Business Associate without written approval of the Covered Entity. The Covered Entity may assign this Agreement upon written notice to the Business Associate.
- f. This Agreement shall inure to the benefit of and be binding upon the Parties, their respective successors or assigns.
- g. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as though such invalid or unenforceable provision was omitted.
- h. Sections 1-7 shall survive termination of this Agreement to the extent necessary to effectuate their terms or indefinitely with respect to the use and disclosure of PHI.
- i. Any notices to be given hereunder shall be given via U.S. Mail, return receipt requested, by a recognized commercial express courier, and/or via facsimile ("fax") as follows:

If to Business Associate, to:  
 Dermatology Billing Associates, Inc.  
 125 Oxford Road  
 Casselberry, FL 32730-2111  
 Attention: Jessica Bitterling  
 Fax: (407) 678-2632

with a copy (which shall not constitute notice) to:

If to Covered Entity, to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attention: Privacy Officer  
 Fax: (     ) \_\_\_\_\_

Each Party named above may change its address, fax number and/or the name of its representative by providing notice thereof in the manner provided above.

- j. This Agreement shall be construed according to the laws of the State of Florida applicable to contracts formed and wholly performed within that State. The Parties further agree that should a cause of action arise under any federal law, the suit shall be brought in the federal district court of the Middle District of Florida.

k. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

l. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed effective as of the date first stated above.

**COVERED ENTITY:**

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
CLIENT Signature

\_\_\_\_\_  
Print Client Name

Title: \_\_\_\_\_

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

**BUSINESS ASSOCIATE:**

Dermatology Billing Associates, Inc.

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

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

Title: \_\_\_\_\_

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