

## DATA WAREHOUSING AGREEMENT

This Data Warehousing Agreement (the “*Agreement*”) is made as of the Effective Date (as defined below) by and between FIGmd, Inc., a Delaware corporation (“*FIGmd*”), and the undersigned practice (“*Practice*”). FIGmd and Practice shall each be deemed a “*Party*” and collectively the “*Parties*” for all purposes under this Agreement.

**WHEREAS**, FIGmd has developed a health data warehouse to collect identifiable clinical data in connection with many different procedures and services (the “*HDW*”);

**WHEREAS**, Practice desires to participate in the HDW; and

**WHEREAS**, Practice also desires to retain FIGmd to provide the other services described herein.

**NOW, THEREFORE**, the Parties agree as follows:

1. Business Associate. The Parties agree that FIGmd qualifies as a “Business Associate” of Practice under the Health Insurance Portability and Accountability Act of 1996 (“*HIPAA*”). Accordingly, FIGmd and Practice hereby enter into the Business Associate Agreement attached hereto as Exhibit A (the “*Business Associate Agreement*”) as of the Effective Date.

2. Services. FIGmd shall maintain the identifiable clinical data collected pursuant to Section 3 in the HDW and release a copy of some or all of such data or aggregated, de-identified clinical data based upon such data in accordance with any data release consent delivered by Practice to FIGmd acceptable in form and substance to FIGmd in its sole discretion. FIGmd and Practice hereby enter into the Data Release Consent attached hereto as Exhibit B as of the Effective Date, it being understood that FIGmd and Practice may enter into one or more subsequent data release consents after the Effective Date.

3. Data.

(a) Collection Methods. Prior to submitting identifiable clinical data to FIGmd for inclusion within the HDW, Practice shall select an approved data collection method identified by FIGmd. FIGmd shall not be obligated to accept identifiable clinical data that is submitted through a data collection method that has not been previously approved by FIGmd.

(b) Collection Processes. After selecting the collection method(s) contemplated by Section 3(a), Practice shall furnish identifiable clinical data to FIGmd for inclusion within the HDW. Practice acknowledges and agrees, and hereby authorizes, that the collection of any particular and separate identifiable clinical data for inclusion within the HDW will occur only one time by FIGmd. Such collected data shall be evaluated by FIGmd for quality, accuracy and completeness and other factors relevant to the HDW and possible uses of such collected data through the functioning of the HDW. FIGmd reserves the right to reject any collected data in its entirety or to limit the use of any collected data if such data does not conform to the requirements of FIGmd. Practice covenants, represents and warrants that Practice

has obtained and will obtain all rights or consents from any third party (including, without limitation, patients of Practice and database vendors of Practice) as necessary under applicable law, agreement or otherwise (or as otherwise deemed appropriate in FIGmd's reasonable discretion) to permit such collection and evaluation and grant the rights provided under Section 4(a).

(c) Practice of Medicine. Practice acknowledges and agrees that FIGmd and its representatives are not practicing medicine by the functioning of the HDW. Practice covenants, represents and warrants that Practice and the physicians affiliated with Practice are solely responsible for clinical decision-making and the exercise of sound medical judgment in the care and treatment of patients of Practice.

(d) Point of Contact. Practice shall designate a staff member of Practice to be the primary contact for FIGmd for all matters contemplated by this Section 3. FIGmd may grant such staff member access to an Internet-based dashboard for such staff member to provide data release consents and to view Practice's history of consents and related data releases. FIGmd may rely on all communications from such staff member as authorized communications of Practice.

#### 4. Intellectual Property.

(a) Practice Data. Any identifiable clinical data submitted by Practice to FIGmd hereunder shall be the exclusive property of Practice, subject to the rights, if any, of patients of Practice in Individually Identifiable Health Information (as defined in HIPAA) and subject to the rights granted to FIGmd hereunder. Practice hereby agrees that the return of such data is practically infeasible but, upon Practice's written request, FIGmd will delete such data. Practice hereby grants to FIGmd a worldwide, enterprise-wide, royalty-free license for so long as FIGmd maintains a copy of such data to use such data in any manner that is consistent with this Agreement. Notwithstanding the above, Practice agrees that the use and retention of the data by a recipient as identified on a data release consent shall be governed by the registry participation agreement or any other written agreement between Practice and recipient and such agreement may include a business associate agreement with respect thereto.

(b) Software and Systems. As between Practice and FIGmd, FIGmd shall exclusively own the software and systems provided by or used in connection with the data, data sets, databases and the like of the HDW and all intellectual property rights therein. Without limiting the foregoing, as between Practice and FIGmd, Practice acknowledges and agrees that FIGmd exclusively owns the data sets, databases and the like of the HDW and all intellectual property rights prepared by or for FIGmd related thereto (including, without limitation, processes, techniques, algorithms, know-how and trade secrets). Further without limiting the foregoing, Practice acknowledges and agrees that, once any data submitted by FIGmd is accepted by the HDW, such data shall not be considered Confidential Information subject to the rights and obligations under Section 7.

#### 5. Publicity.

(a) Publicity by Practice. Without the express prior written consent of FIGmd, Practice shall not make any announcements concerning the matters set forth in this

Agreement, use the trademarks, names, acronyms, symbols or logos of FIGmd or make any reference to FIGmd in any advertising or promotional material or other communication that is not strictly internal to Practice; provided, however, that Practice may publicly acknowledge that Practice is a participant in the HDW when requested to do so.

(b) Publicity by FIGmd. Without the express prior written consent of Practice, FIGmd shall not use the trademarks names, acronyms, symbols or logos of Practice or make any reference to Practice in any advertising or promotional material that is not strictly internal to FIGmd (it being understood that FIGmd may make an announcement that Practice is participating in the HDW whenever FIGmd deems it appropriate to do so).

6. Term and Termination.

(a) Term. This Agreement shall be effective starting as of the Effective Date and conclude on December 31, 2017 unless terminated earlier as provided herein, subject to automatic renewals for consecutive additional one (1) year periods (starting as of the then-applicable expiration date and expiring on the end of such period) unless FIGmd or Practice provides the other Party with thirty (30) days' advance written notice of its desire to terminate this Agreement at the end of the then-applicable expiration date.

(b) Termination for Convenience. Intentionally omitted.

(c) Termination for Breach. Either FIGmd or Practice may terminate this Agreement upon the other Party's material breach of this Agreement by providing the non-breaching Party with written notice of its intention to terminate. The breaching Party shall have ten (10) days from receipt of such notice to cure the breach. If such breach is not cured to the satisfaction of such non-breaching Party, this Agreement shall terminate automatically effective at the end of such ten (10)day cure period.

(d) Survival. Sections 4 and 7 through 19 and any accrued obligations hereunder shall survive any expiration or termination of this Agreement.

7. Confidentiality.

(a) Confidential Information. "**Confidential Information**" means any information disclosed by one Party to the other Party that is (i) marked on the documentation for such information as "confidential" or "proprietary" or (ii) identified in writing by the disclosing Party to the receiving Party to be confidential on the date of disclosure or within thirty (30) days thereof. FIGmd and Practice shall maintain all of the disclosing Party's Confidential Information in strict confidence and shall protect such information with the same degree of care that such receiving Party exercises with its own Confidential Information, but in no event with less than a reasonable degree of care. Except as provided in this Agreement, such receiving Party shall not use or disclose any Confidential Information of the disclosing Party in any manner without the express prior written consent of the disclosing Party. Access to and use of any Confidential Information shall be restricted to those representatives within such receiving Party's organization with a "need to know" such Confidential Information who are subject to confidentiality obligations no less stringent than those applicable to such receiving Party under this Section.

(b) Equitable Relief. The Parties agree that the provisions of this Section are reasonable and necessary to protect the business, interests and properties of the Parties. Any breach or threatened breach of this Section by the receiving Party is a material breach of this Agreement which would cause irreparable injury to the disclosing Party and that the disclosing Party's remedy at law for any such breach would be inadequate. Accordingly, the Parties agree that temporary and permanent injunctive relief shall be granted in any proceeding that may be brought to enforce any provision of Section without necessity of a bond, proof that a remedy at law is inadequate or other requirement; provided, however, that nothing contained herein shall be deemed to preclude the disclosing Party from seeking damages or any other remedy at law or in equity as may be appropriate for a breach of this Section by the receiving Party.

8. Indemnification.

(a) Indemnification by FIGmd. FIGmd shall indemnify, defend and hold Practice, its affiliates or any of their respective directors, managers, officers, employees, consultants or advisors or any of the heirs, executors, successors or assigns of any of the foregoing harmless for, from and against any third party claim, demand, cause of action, lawsuit or proceeding (a "***Third-Party Claim***") brought against any of the foregoing based upon any breach of this Agreement, gross negligence or willful misconduct on the part of FIGmd. Such indemnification may include reasonable attorneys' fees and costs associated with defense of such Third-Party Claim, any damages and costs finally awarded by reason of such Third-Party Claim and the cost of any settlement of such Third-Party Claim entered into by FIGmd. Such indemnification obligation is contingent on Practice: (i) notifying FIGmd of such Third-Party Claim within thirty (30) days of Practice's knowledge of such Third-Party Claim; (ii) providing FIGmd with reasonable information, assistance and cooperation in defending such Third-Party Claim to the extent requested by FIGmd; and (iii) giving FIGmd full control and sole authority over the defense and settlement of such Third-Party Claim (it being understood that FIGmd shall not enter into any settlement or compromise of such Third-Party Claim without Practice's prior written consent, which shall not be unreasonably withheld, conditioned or delayed).

(b) Indemnification by Practice. Practice shall indemnify and hold FIGmd, its affiliates or any of their respective directors, managers, officers, employees, consultants or advisors or any of the heirs, executors, successors or assigns of any of the foregoing harmless for, from and against any Third-Party Claim brought against any of the foregoing based upon any breach of this Agreement, gross negligence or willful misconduct on the part of Practice, the business of Practice and the physicians affiliated with Practice and, except to the extent FIGmd is obligated to indemnify Practice under Section 8(a), Practice's participation in the HDW or the release and use of any data for which Practice provided a data release consent. Such indemnification may include reasonable attorneys' fees and costs associated with defense of such Third-Party Claim, any damages and costs finally awarded by reason of such Third-Party Claim and the cost of any settlement of such Third-Party Claim entered into by the applicable indemnified party. Such indemnification obligation is contingent on FIGmd notifying Practice of such Third-Party Claim within thirty (30) days of FIGmd's knowledge of such Third-Party Claim. Practice acknowledges and agrees that the applicable indemnified party will have full control and sole authority over the defense and settlement of such Third-Party Claim (it being understood that such indemnified party shall not enter into any settlement or compromise of such Third-Party Claim without Practice's prior written consent, which shall not be unreasonably

withheld, conditioned or delayed).

9. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY HEREUNDER, BASED ON ANY THEORY OF LIABILITY OR CAUSE OF ACTION, EXCEED THE TOTAL AMOUNT OF FEES TO BE PAID BY THE PRACTICE TO FIGMD UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION OR INCLUDE ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER OF THE FOREGOING LIMITATIONS SHALL APPLY WITH RESPECT TO ANY BREACH OF SECTIONS 4 OR 7. NOTWITHSTANDING THE PRECEDING SENTENCE THE AGGREGATE LIABILITY ASSOCIATED WITH ANY OBLIGATIONS UNDER OR ANY BREACH OF THE BUSINESS ASSOCIATE AGREEMENT ENTERED INTO BETWEEN THE PARTIES (INCLUDING, WITHOUT LIMITATION, A BREACH OF PROTECTED HEALTH INFORMATION) SHALL BE FIFTY THOUSAND DOLLARS (\$50,000) IN TOTAL WITH A SUBLIMIT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000) FOR REMEDIATION EXPENSES ASSOCIATED WITH A BREACH OF PROTECTED HEALTH INFORMATION. IF THERE IS ANY CONFLICT BETWEEN THE PROVISIONS OF THIS SECTION 9 AND ANY BUSINESS ASSOCIATE AGREEMENT ENTERED INTO BETWEEN THE PARTIES THIS SECTION 9 SHALL CONTROL.

10. Notices. All notices under this Agreement must be in writing and shall be deemed given when delivered personally, one (1) day after being sent by nationally recognized courier service or three (3) days after being sent by prepaid certified mail, in each case at or to the address of the Party to be noticed as set forth herein or such other address as such Party last provided to the other Party by written notice.

11. Headings. The headings of the various paragraphs hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.

12. Assignment. Neither this Agreement nor the rights and obligations hereunder may be assigned by any Party to a third party without the prior written consent of the non-assigning Party; provided, however, any Party may assign this Agreement and all of its rights and obligations hereunder without the prior written consent of the other Party to a successor to the relevant portion of the assigning Party's business by reason of merger, sale of all or substantially all of its relevant assets or equity or any similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13. Relationship of Parties. The Parties are independent contractors and principals for their own accounts. This Agreement does not make any Party an agent or legal representative of another Party and does not create a partnership, joint venture or similar relationship.

14. Counterparts. This Agreement may be executed in one or more counterparts, each

of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

15. Amendments; Waiver. No amendments or waivers to this Agreement shall be effective unless in writing and signed by the Party against whom such amendment or waiver is to be enforced. The failure of a Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

16. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Illinois without giving effect to the principles of conflict of laws. With respect to any disputes arising out of or related to this Agreement, the Parties consent to the exclusive jurisdiction of, and venue in, the state courts in Cook County in the State of Illinois (or, in the event of exclusive federal jurisdiction, the federal courts of the Northern District of Illinois).

17. Severability. If any provision of this Agreement is deemed void or unenforceable, then such provision shall nevertheless be enforced to the fullest extent allowed by law and the validity of the remainder of this Agreement shall not be affected.

18. Entire Agreement. This Agreement and its Exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede and replace all prior agreements, oral or written, among the Parties relating to such subject matter.

19. No Third Party Beneficiaries. Except as provided in Section 8, the Parties agree that there are no third party beneficiaries, intended or otherwise, to this Agreement (including, without limitation, patients of Practice).

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed as of the last date identified below (the “*Effective Date*”).

<b>PRACTICE:</b>	<b>FIGmd:</b>
Legal Name: _____	FIGmd, Inc.
Signature: _____	Signature: _____
Title: _____	Title: _____
Date: _____	Date: _____
Address: _____ _____ _____ _____	Address: FIGmd, Inc. 10 N Martingale Road, Suite 400 Schaumburg, IL 60173 Attn: Chief Executive Officer  With a copy (which shall not constitute notice) to:  Pillsbury Winthrop Shaw Pittman LLP 12255 El Camino Real, Suite 300 San Diego, CA 92130 Attn: Christian Salaman

## EXHIBIT A

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “*Agreement*”) is made as of the Effective Date (as defined below) by and between FIGmd, Inc., a Delaware corporation (“*FIGmd*”), and the practice indicated on the Master Agreement (as defined below) (“*Practice*”). FIGmd and Practice shall each be deemed a “*Party*” and collectively the “*Parties*” for all purposes under this Agreement. The Parties enter into this Agreement in order to comply with the Health Insurance Portability and Accountability Act of 1996 and its related regulations (“*HIPAA*”) in connection with that certain Data Warehousing Agreement, dated as of the Effective Date, between the Parties (together with any data release consents related thereto, the “*Master Agreement*”).

1. Definitions. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, under HIPAA (the “*Privacy Rule*”) and the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C, under HIPAA (the “*Security Rule*”).

2. Obligations and Activities of FIGmd. FIGmd agrees as follows:

a. FIGmd agrees to not use or disclose Protected Health Information other than as permitted or required by the Master Agreement or as Required By Law.

b. FIGmd agrees to use appropriate administrative, physical and technical safeguards to protect the privacy and security of Protected Health Information and to comply with all applicable requirements of the Privacy Rule and the Security Rule.

c. FIGmd agrees to report to Practice any uses or disclosures of Protected Health Information not provided for by this Agreement. For any Breach, FIGmd shall report relevant details required by 45 CFR 164, Subpart D, within 10 days of the Discovery of the Breach.

d. FIGmd agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from or created or received by FIGmd on behalf of Practice agrees to the same restrictions and conditions that apply through this Agreement to FIGmd with respect to such information.

e. FIGmd agrees to provide access, at the request of Practice in a reasonable time and manner, to Protected Health Information in a Designated Record Set to Practice or, as directed by Practice, to an Individual in order to meet the requirements under 45 CFR 164.524.

f. FIGmd agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Practice directs or agrees to pursuant to 45 CFR 164.526 at the request of an Individual in a reasonable time and manner.

g. FIGmd agrees to make internal practices, books and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from or created or received by FIGmd on behalf of Practice available to the Secretary in a time and designated by the Secretary, for purposes of the Secretary determining compliance with the Privacy Rule.

h. FIGmd agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Practice to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance



with 45 CFR 164.528.

3. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, the Parties agree that FIGmd may use or disclose Protected Health Information to perform functions, activities or services for or on behalf of Practice as specified in the Master Agreement; provided, however, that such use or disclosure would not violate the Privacy Rule if done by Practice.

4. Specific Use and Disclosure Provisions. The Parties agree as follows:

a. Except as otherwise limited in this Agreement, FIGmd may use Protected Health Information for the proper management and administration of FIGmd or to carry out the legal responsibilities of FIGmd.

b. Except as otherwise limited in this Agreement, FIGmd may disclose Protected Health Information for the proper management and administration of FIGmd; provided, however, that disclosures are Required By Law or FIGmd obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person and the person notifies FIGmd of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this Agreement, FIGmd may use Protected Health Information to provide Data Aggregation services to Practice as permitted by 45 CFR 164.504(e)(2)(i)(B).

d. FIGmd may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

5. Obligations and Activities of Practice. Practice agrees as follows:

a. Practice shall notify FIGmd of any limitation(s) in any notice of privacy practices of Practice in accordance with 45 CFR 164.520 to the extent that such limitation may affect FIGmd's use or disclosure of Protected Health Information.

b. Practice shall notify FIGmd of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information to the extent that such changes may affect FIGmd's use or disclosure of Protected Health Information.

c. Practice shall notify FIGmd of any restriction to the use or disclosure of Protected Health Information that Practice has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect FIGmd's use or disclosure of Protected Health Information.

d. Practice shall not request FIGmd to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Practice.

6. Term and Termination. The Parties agree as follows:

a. The term of this Agreement shall be effective as of the date hereof and shall terminate when all of the Protected Health Information provided by Practice to FIGmd or created or received by FIGmd on behalf of Practice is destroyed. If it is infeasible to destroy Protected Health Information, then the term of this Agreement shall continue and the Parties rights and obligations under this Agreement shall continue.

b. Upon Practice's knowledge of a material breach by FIGmd and written notice

thereof to FIGmd, Practice shall provide a reasonable opportunity for FIGmd to cure the breach or, if cure is neither feasible nor achieved, report the violation to the Secretary.

7. Miscellaneous. The Parties agree as follows:

a. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended.

b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either Party to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA.

c. Any ambiguity in this Agreement shall be resolved to permit Practice to comply with the Privacy Rule, the Security Rule and HIPAA.

d. This Agreement is hereby incorporated into the Master Agreement as an addendum to the Master Agreement. This Agreement is subject to the terms of the Master Agreement, which shall remain in full force and effect unmodified by this Agreement (it being acknowledged and agreed that there is no conflict between this Agreement and the Master Agreement because this Agreement is specific to the Privacy Rule, the Security Rule and HIPAA).

**EXHIBIT B**

**DATA RELEASE CONSENT**

<b>Information about the Practice</b>	
<b>Legal Name:</b>	
<b>Address:</b>	
<b>Contact's Name:</b>	
<b>Contact's Phone:</b>	
<b>Contact's Email:</b>	

<b>Information about the Recipient</b>	
<b>Legal Name:</b>	
<b>Address:</b>	
<b>Contact's Name:</b>	
<b>Contact's Phone:</b>	
<b>Contact's Email:</b>	

<b>Information about the Data</b>	
<b>Description:</b>	[Identifiable and/or de-identified submitted to the HDW by the Practice]
<b>Method:</b>	
<b>Timeline:</b>	
<b>Purpose:</b>	[Reporting to the [___] Registry]
<b>Other:</b>	

As contemplated by the Data Warehousing Agreement between the “Practice” identified above and FIGmd, Inc. (“*FIGmd*”), the Practice hereby authorizes and instructs FIGmd to disclose the data described in general terms above to the “Recipient” identified above and its designee(s). Practice has determined, and hereby represents, that any disclosure of such data made in accordance with this Date Release Consent is permitted under applicable laws (including, without limitation, HIPAA) and Practice has obtained any authorizations or consents from patients or other third parties required for such disclosure. Practice acknowledges and agrees that this Data Release Consent neither amends nor waives any term or condition of such Data Warehousing Agreement.