

## **AFFILIATION AGREEMENT**

This Affiliation Agreement (“Agreement”) is entered into by and between Orthopaedics-Indianapolis, Inc. and/or Indiana Orthopaedic Hospital, LLC (collectively, “OrthoIndy”) and Central Nine Career Center\_\_\_\_ (“School”).

### **WITNESSETH:**

**WHEREAS**, OrthoIndy and School wish to form a relationship to provide educational experiences in a clinical setting for students enrolled at School in the Orthopaedic Surgery Program (collectively, “Students”), with the objective of producing competencies in the field of study upon completion of Students’ training; and

**WHEREAS**, OrthoIndy is willing to allow Students access to its premises under the terms and conditions referred to herein; and

**WHEREAS**, it is agreed by the parties to be of mutual interest and advantage for selected Students to be provided quality educational and clinical experiences at OrthoIndy.

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

### **I. OBLIGATIONS OF SCHOOL**

- 1.1 School will provide written requests to assign Students to OrthoIndy. The number of Students assigned will be subject to the availability of OrthoIndy’s personnel for teaching and supervision as well as subject to the availability of Students. School shall ordinarily provide OrthoIndy with the names of Students with dates of their arrival at least thirty (30) days prior to Students’ arrival.
- 1.2 School shall provide or otherwise confirm that each Student has received appropriate instruction and has satisfactorily completed the prerequisite portion of the curriculum.
- 1.3 School reserves the right to revoke any assignment prior to Student’s entry into the educational and clinical rotations at OrthoIndy, or to withdraw a Student from the assigned educational and clinical experiences, when, in School’s judgment, the educational and clinical experiences no longer meet the needs of Student.
- 1.4 School shall ensure Students performing services at OrthoIndy comply with the policies and procedures of OrthoIndy during any part of Students’ rotation that takes place on OrthoIndy’s premises or that involves the care of patients admitted to OrthoIndy’s facilities.
- 1.5 School shall establish a procedure for notifying OrthoIndy if a Student is unable for any reason to report for his/her rotation at OrthoIndy.

- 1.6 School shall ensure that Students have either a Temporary Medical Permit or an unlimited license to practice medicine in Indiana. School will provide a copy of licensure to OrthoIndy upon request.
- 1.7 School shall ensure that Students meet OrthoIndy's health and safety screening requirements as set forth in **Exhibit A**, attached hereto.
- 1.8 For each Student involved in an educational and clinical experience on OrthoIndy's premises, School shall maintain professional liability insurance or shall require each Student to maintain an individual professional liability policy with limits of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate covering the educational and clinical experiences provided pursuant to this Agreement. A Certificate of Insurance shall be provided to OrthoIndy prior to the commencement of each educational and clinical experience. School shall ensure that Students are covered by a Worker's Compensation insurance policy per statutory limits and that Students are covered by School's liability insurance in an amount not less than One Million Dollars (\$1,000,000). If employees of School will be at OrthoIndy with Students during the educational and clinical experiences, School shall provide, upon request, evidence of professional liability insurance and Workers' Compensation insurance covering its' employees in the aforementioned amounts.
- 1.9 School shall ensure that Students performing services at OrthoIndy are covered by a Medical Malpractice Insurance policy that qualifies each Student as a qualified provider under the Indiana Medical Malpractice Act (I.C. § 34-18, *et seq.*). School agrees that Students will remain qualified providers thereunder during their rotations, whereby Students perform services at OrthoIndy, and said coverage shall extend for the two year statute of limitations thereafter. School shall provide OrthoIndy proof of such coverage prior to the beginning of a Student's rotation.
- 1.10 School shall provide OrthoIndy with documentation evidencing: (i) a current criminal records check, enabling Student to work in direct contact with patients in a healthcare setting; and (ii) a current check of the HHS/OIG List of Excluded Individuals/Entities (available at <http://www.oig.hhs.gov>) and the GSA's List of parties Excluded from Federal Programs (available at <http://www.epls.gov>).
- 1.11 School shall require that each Student will obtain prior written approval from an authorized representative of OrthoIndy's administration before publishing any material related to a Student's experience.
- 1.12 School shall provide each Student with proper identification that at a minimum would include Student's full name, a photo of Student, and the name of School. School shall require that Students display identification at all times according to OrthoIndy's policy.
- 1.13 School shall require that each Student be able to provide proof of health insurance to OrthoIndy and that each Student has knowledge that he/she will be accountable

for payment of personal medical expenses as a result of personal illness or injury occurring during the course of the educational and clinical experiences.

- 1.14 School shall inform Students that they shall receive no compensation or benefits of any nature directly or indirectly from OrthoIndy for activities conducted pursuant to this Agreement.
- 1.15 School shall assume responsibility for the administration of the educational and clinical program, including, but not limited to, curriculum development, grading, requirements for matriculation, credits, scheduling, and clinical hours for Students.
- 1.16 School will inform Students that as a condition for participation in the educational and clinical experiences at OrthoIndy, Students must adhere to the obligations as stated in Section II of this Agreement.

## **II. OBLIGATIONS OF STUDENTS**

- 2.1 Students shall handle all confidential information in a professional manner. Under no circumstances will a Student discuss a patient or client with anyone other than the appropriate OrthoIndy or School staff in a manner which would identify the patient or client. Student will comply with OrthoIndy's HIPAA privacy and security policy applicable to members of OrthoIndy's work force as described in Section 9.11 below.
- 2.2 Students shall adhere to all rules, policies, and procedures of OrthoIndy and the specific department/division to which they are assigned.
- 2.3 Students shall submit an evaluation of their experience to their faculty instructor who will then summarize Students' comments for OrthoIndy, upon request.
- 2.4 Students shall provide proof that their health care status meets the requirements of School, including but not limited to, immune status for Rubella and negative TB test as described in **Exhibit A**.

## **III. OBLIGATIONS OF ORTHOINDY**

- 3.1 So long as School and Students fulfill each of the obligations contained herein, OrthoIndy shall allow Students access to its premises.
- 3.2 OrthoIndy will designate a staff member as its Clinical Coordinator to work and coordinate with School Students' rotations and educational and clinical experiences at OrthoIndy; and the Clinical Coordinator is also responsible for coordinating the clinical program at OrthoIndy and providing a planned and supervised program for Students.
- 3.3 OrthoIndy will provide orientation and a tour for Students of its facilities, and an overview of its rules, regulations, and procedures.

- 3.4 OrthoIndy shall schedule adequate staff to provide the necessary level of care for its patients and shall not rely upon Student participation in determining staffing levels.
- 3.5 OrthoIndy shall maintain ultimate responsibility and authority regarding patient care. OrthoIndy shall not permit Students to practice at OrthoIndy unless they are under the appropriate supervision of an instructor who is physically present on the premises. OrthoIndy is at all times responsible for administrative and professional supervision of Students performing educational and clinical activities at OrthoIndy under this Agreement, and will assure that each Student has a consistent and appropriate level of supervision.
- 3.6 OrthoIndy shall provide Students with access to first aid, emergency care and medical assessment for illness, accidents, or incidents which occur on OrthoIndy property and which require immediate attention. Students shall be responsible for the cost of any such care. OrthoIndy agrees to notify School and, if appropriate and if possible, Student's parents, guardian, or next of kin, in case of an emergency medical situation.
- 3.7 OrthoIndy will provide the physical facilities and learning opportunities necessary for the educational and clinical experiences at OrthoIndy and will provide School with facility information as required by School to maintain program accreditation, as applicable.
- 3.8 OrthoIndy will inform School immediately when a Student is not performing satisfactorily or is demonstrating behavior that is disruptive or detrimental to OrthoIndy. If OrthoIndy, in its sole discretion, determines that the continued presence of any Student poses a threat to the welfare of any patient or employee, or is detrimental or disruptive to the performance of OrthoIndy's activities or its operations, such Student's privileges of participating in the program at OrthoIndy shall be immediately suspended.
- 3.9 OrthoIndy will notify School in writing of any changes within OrthoIndy which would alter significantly the specified educational and clinical experiences for Students.

#### **IV. MUTUAL OBLIGATIONS**

- 4.1 OrthoIndy and School agree to cooperatively establish the learning objectives for the educational and clinical experiences, devise methods for their implementation, and evaluate the effectiveness of the educational and clinical experiences.
- 4.2 The parties agree to comply with Title VI and IX of the Federal Education Amendments of 1972, and Section 504 of the Federal Rehabilitation Act of 1973, Executive Order 11,246 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion,

ethnic or national origin, gender, sexual orientation, marital status, age, disability, or veteran status.

- 4.3 Both parties shall maintain the confidentiality of Student records and performance in compliance with applicable state and federal laws, accreditation standards, and OrthoIndy's and School's policies. Further, the parties acknowledge that student educational records are protected by the Family Educational Rights and Privacy Act (FERPA), and that it may be necessary to obtain student permission before releasing student data to any party except School. OrthoIndy will abide by the provisions of FERPA with respect to any request for student information by any party except School.
- 4.4 Both parties agree to accept and be responsible for their own acts or omissions, as well as the acts or omissions of their own employees, agents, faculty and/or Students.
- 4.5 Each party accessing or receiving ("Receiving Party") confidential or proprietary information, including, without limitation, business practices and systems, data processes, clinical processes and outcomes, cost and pricing data, financial information, personnel, student and patient information ("Confidential Information") from the other party ("Disclosing Party") agrees to hold the Confidential Information in strict confidence, and apply at least the same standard of care, but no less than industry standard of care, used in protecting its own Confidential Information and not to disclose any Confidential Information to any third party and not to use any Confidential Information of the Disclosing Party without the Disclosing Party's written consent, except as required by law. This provision shall survive the termination of this Agreement.
- 4.6 No party shall use or mention in any publicity, advertising, promotional materials or news release the name or service mark(s) of the other party without the prior written consent of that party.

## **V. COMPENSATION**

The parties agree that this Agreement is mutually beneficial to both parties and no compensation is therefore anticipated under this Agreement.

## **VI. TERM AND TERMINATION**

- 6.1 Term. The term of this Agreement shall be effective for a period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, and terminating on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_. This Agreement will automatically renew for successive one (1) year terms unless otherwise terminated consistent with Section 6.2 of the Agreement.
- 6.2 Termination. This Agreement may be terminated as follows:

- 6.2.1 Termination by Agreement. In the event the parties shall mutually agree in writing, this Agreement may be terminated on terms and date stipulated therein.
- 6.2.2 Termination Without Cause. This Agreement may be terminated by either party without cause by delivering a written notice of termination to the other party at least thirty (30) days prior to such early termination, provided that Students who are currently in a rotation at OrthoIndy be allowed to complete that rotation without interruption, absent emergency circumstances or other appropriate cause.
- 6.2.3 Termination With Cause. This Agreement may be terminated by either party, upon fifteen (15) days prior written notice to the other party, in the event the other party fails or refuses to perform any of its duties and responsibilities under this Agreement; provided, however, that in the event the failure is remedied within fifteen (15) days after such notice is given, such notice shall be null and void and the Agreement shall continue in full force and effect.

## **VII. STATUS OF THE PARTIES**

Independent Relationship. In performing the services as contemplated hereunder, the parties agree that OrthoIndy and Students are acting as independent contractors and not as agents or employees of OrthoIndy. No Students providing services hereunder shall be deemed to be an employee of OrthoIndy, nor will OrthoIndy be liable for the payment of any wage, salary, or compensation of any kind for services provided by Students. Further, no Students shall be covered under OrthoIndy's Worker's Compensation, Social Security, or Unemployment Compensation or any other benefit programs.

## **VIII. INDEMNIFICATION**

School shall indemnify, defend and hold OrthoIndy, its agents and employees, harmless from all claims, loss, damage or injury of any kind or nature to any person or property caused by any Student or School staff arising from the performance of the terms and responsibilities under this Agreement.

## **IX. MISCELLANEOUS PROVISIONS**

- 9.1 The parties will operate at all times in compliance with federal, state, and local laws, rules and regulations, the policies, rules and regulations of the parties.
- 9.2 School shall not disclose any data, reports, or other materials containing information specific to OrthoIndy without the prior written consent of OrthoIndy.
- 9.3 Notices or communications herein required or permitted shall be given to the respective parties by registered or certified mail (said notice being deemed given as of the date of mailing) or by hand delivery at the following addresses, unless either party shall otherwise designate its new address by written notice:

OrthoIndy

School

Attn: \_\_\_\_\_  
8450 Northwest Blvd.  
Indianapolis, IN 46278

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

- 9.4 Assignment of this Agreement or the rights or obligations hereunder shall be invalid without the specific written consent of the other party herein, except that this Agreement may be assigned by OrthoIndy without the written approval of School to any successor or related entity of OrthoIndy.
- 9.5 This Agreement supersedes all previous contracts or agreements between the parties with respect to the same subject matter and does constitute the entire agreement between the parties hereto and OrthoIndy shall neither be entitled to other benefits than those herein specifically enumerated.
- 9.6 The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or take advantage of any rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any rights, but the same shall continue and remain in full force and effect.
- 9.7 This Agreement shall be interpreted under the internal laws of the State of Indiana, and both parties consent to the jurisdiction of courts of competent jurisdiction sitting in Marion County, Indiana. The parties waive any venue or inconvenient forum objections to proceeding in such courts and agree to be validly served in connection with any legal proceeding by certified mail addressed as specified for notices.
- 9.8 In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- 9.9 This Agreement may be amended only by an instrument in writing signed by the parties hereto.
- 9.10 OrthoIndy has in place a Corporate Compliance Program (“Compliance Program”) which has as its goal to ensure that OrthoIndy complies with federal, state and local laws and regulations. The Compliance Program focuses on risk management, the promotion of good corporate citizenship, including the commitment to uphold a high standard of ethical and legal business practices, and the prevention of misconduct. School acknowledges OrthoIndy’s commitment to Corporate Compliance and agrees to conduct all business transactions which occur pursuant to this Agreement in accordance with the underlying philosophy of Corporate Compliance adopted by OrthoIndy. School further agrees to disclose immediately any proposed or actual debarment, exclusion or other event that makes School

ineligible to participate in federal health care programs or federal procurement or non-procurement programs.

- 9.11 Each party agrees that it will comply in all material respects with all federal and state mandated regulations, rules or orders applicable to privacy, security and electronic transactions, including without limitation, regulations promulgated under Title II, Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-191) (“HIPAA”), and as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”). Further, the School agrees to execute a Business Associate Agreement with OrthoIndy, which is attached hereto and incorporated herein as **Exhibit B**, to comply with HIPAA.

Furthermore, the parties shall promptly amend the Agreement to conform with any new or revised legislation, rules and regulations to which OrthoIndy is subject now or in the future including, without limitation, the Standards for Privacy of Individually Identifiable Health Information or similar legislation (collectively, “Privacy Laws”) in order to ensure that OrthoIndy is at all times in conformance with all Privacy Laws. If, within thirty (30) days of either party first providing notice to the other of the need to amend the Agreement to comply with Privacy Laws, the parties, acting in good faith, are (a) unable to mutually agree upon and make amendments or alterations to this Agreement to meet the requirements in question, or (b) alternatively, the parties determine in good faith that amendments or alterations to meet the requirements are not feasible, then either party may terminate this Agreement upon thirty (30) days’ prior written notice.

- 9.12 The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), as well as the posting requirements of 29 C.F.R. part 471, appendix A to subpart A, if applicable.
- 9.13 This Agreement and any amendments thereto shall be executed in duplicate copies on behalf of OrthoIndy and School. Each duplicate copy shall be deemed an original, but both duplicate originals together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic means will be deemed to be their original signatures for all purposes.



**X.     EXECUTION**

**IN WITNESS WHEREOF**, the duly authorized representatives of OrthoIndy and School have executed this Agreement on the dates written below.

**ORTHOINDY**

**Central Nine Career Center**

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

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

Printed: \_\_\_\_\_

Printed:\_\_\_\_\_

Title\_\_\_\_\_

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

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

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

## **EXHIBIT A**

### **HEALTH AND SAFETY EXHIBIT**

School shall provide documentation to OrthoIndy attesting to the assigned Students and/or Faculty Member's medical clearance to the satisfaction of OrthoIndy. OrthoIndy agrees that, as to items 1 – 3, immediately below, such documentation provided to OrthoIndy may be in the form of a letter from a health care provider, including, without limitation, the entity that operates the student health clinic on School's campus, certifying that each of the elements in 1 – 3, below, are met. This documentation shall provide evidence satisfactory to OrthoIndy that:

1. Student/Faculty Member is free of Communicable Disease (defined below);
2. Student/Faculty Member has all required immunity to Communicable Diseases (defined below);
3. Student/Faculty Member is physically capable of performing job tasks (with or without reasonable accommodation);
4. Student/Faculty Member has awareness of actual and potential medical issues impacting safety in job role as defined by OrthoIndy; and
5. Student/Faculty Member is aware of and compliant with, as applicable, any incident reporting requirements imposed by OrthoIndy on Student or Faculty Member in connection with the educational and clinical program subject to the Agreement.

The documentation shall reflect the program, if any, of the Department of School that operates the program from which a Student is placed or providing or ensuring Students or Faculty Members have basic employee health and safety information including:

1. Education consistent with Occupational Safety and Health Administration ("OSHA") and Centers for Disease Control ("CDC") Directives (i.e., Blood Borne Pathogens, Respiratory Protection, Tuberculosis Control, Infectious Disease, Safety Device Use);
2. Medical evaluation and screening in pre-placement process;
3. Access to medical services for injury and illness assessment and care; and
4. An injury and illness reporting system that meets state, federal, and accreditation standards (OSHA log, First Report of Injury, OSHA Sharps Injury Log, Medical Records Custodianship for thirty (30) years).

**Pre-Placement Medical Classification.** The Department of School that operates the program from which a Student or Faculty Member is placed shall work with OrthoIndy to ensure that Student has obtained immunity screenings for (i) rubeola, (ii) rubella, (iii) varicella, and (iv) hepatitis B antibody (if previously completed full series of Hepatitis B vaccination), as well

as infectious disease screening for (i) tuberculosis, (ii) Hepatitis B (for work assignments with Blood Borne Pathogen Exposure risk), and (iii) Hepatitis C (for work assignments with Blood Borne Pathogen Exposure risk) (collectively referred to as, “Communicable Diseases”). All such screenings shall be performed in a manner consistent with OSHA, CDC, and any other regulatory requirements. If School performs the aforementioned screenings, School hereby warrants and represents to OrthoIndy that the screenings are performed in a manner compliant with such regulatory requirements. If a third party performs the aforementioned screenings, School shall cause the third party to warrant and represent to OrthoIndy that the screenings are performed in a manner compliant with such regulatory requirements. In the event a Student or Faculty Member fails to demonstrate immunity to any of the conditions referenced in this paragraph, Student shall not participate in the educational and clinical experiences and/or the Faculty Member shall not provide instruction on OrthoIndy’s premises.

Physical and Mental Capability. Upon request as to each Student or Faculty Member placed with OrthoIndy, the Department of School that operates the program from which a Student is placed shall provide documentation of or work with OrthoIndy to arrange for the following:

1. Evidence that a qualified medical professional has reviewed a thorough history, performed a physical exam of Student or Faculty Member, and determined that Student or Faculty Member is able to perform the required work associated with the educational and clinical experiences;
2. If required for the educational and clinical experiences, evaluation of visual acuity and color perception has determined Student or Faculty Member is capable of performing job tasks with or without reasonable accommodation;
3. Evidence that cognitive processing, communication abilities, and basic reasoning are appropriate for educational and clinical experience requirements; and
4. Evidence of compliance with OrthoIndy’s Drug-Free Workplace Policies. School shall submit documentation indicating that a urine drug screening of Student or Faculty Member using at least a standard 10-panel profile has occurred and the results are negative.
5. Evidence that Student and/or Faculty Member has completed a criminal history background check in accordance with OrthoIndy policy.

Upon reasonable request of OrthoIndy, the Department of School that operates the program from which a Student or Faculty Member is placed shall work with OrthoIndy to arrange for the following:

1. Medical Respiratory Health Screen;
2. Spirometry, as indicated;
3. Classification for use of type-specific respirator required to meet TB regulations and standards established by OSHA and CDC (i.e., N-95, PAPR with HEPA); and

4. Respirator Fit-Testing for appropriate respirator device used by OrthoIndy or School provided PAPR (Positive Air Purifying Respirator).

OSHA and Joint Commission Compliance. The Department of School that operates the program from which a Student is placed shall work with OrthoIndy to assure Student or Faculty Member:

1. Possesses knowledge of duties in response to OrthoIndy emergency and disaster codes;
2. Displays competency in response to OrthoIndy fire response requirements;
3. Has or obtains training on OrthoIndy Blood Borne Pathogens control plan, safety devices and use of appropriate Personnel Protective Equipment, to the extent required by OrthoIndy for Student serving in OrthoIndy's Department to which such Student/Faculty Member is assigned;
4. Has or obtains certification of training for all pertinent and applicable OSHA and Joint Commission required competencies; and
5. Completes and documents completion of OrthoIndy Contingent Worker Orientation process.

**Injury and Illness Management.** The Department of School that operates the program from which a Student or Faculty Member is placed and OrthoIndy shall work together to have in place a procedure to be followed for such Student or Faculty Member in the event Student or Faculty Member suffers an injury while providing services pursuant to this Agreement. Such a procedure shall address the following:

1. Access to Medical Services including options surrounding urgent care, emergency care and occupational health services;
2. Injury and Illness Assessment and Care;
3. Infectious Disease Screening, Evaluation and Annual Testing;
4. Work Restriction;
5. Exposure Management addressing:
  - a. BBP (e.g., splash, stick, sharp cut, mucous membrane exposure);
  - b. Respiratory Disease (e.g., pertussis, TB);
  - c. Chemical (e.g., latex, solvents, inhalation, other MSDS defined chemicals);
  - d. Physical (e.g., ergonomics, repetitive strain); and

- e. Radiation (e.g., x-ray, laser).
- 6. Food Borne Illness addressing:
  - a. Compliance with Indiana State Department of Health policies on food borne illness;
  - b. Identification of educational and clinical experience assignments with food borne illness transmission risk;
  - c. Education of Students regarding food borne illness symptoms, reporting, and work restriction for related illness; and
  - d. Surveillance tracking for food borne illness among assigned Students in order to identify outbreaks, clusters of Student absence and illness, and a trigger for reporting Students with food borne illness to OrthoIndy.
  - e. Return-to-work following extended absence and suitability to continue assigned work with or without restrictions;
  - f. Infectious Disease and potential for transmission - including food borne illness;
  - g. Impaired Immunity;
  - h. Temporary Physical Limitations; and
  - i. Permanent Disability Accommodation.
- 7. Incident Reporting addressing:
  - a. OSHA log;
  - b. First Report of Injury;
  - c. Sharps Log; and
  - d. Incident Tracking and Post Incident Intervention.

**Additional Requirements.** School shall work with OrthoIndy to ensure compliance with additional health and safety requirements that are enacted after the commencement of this Agreement or that are required by OrthoIndy, e.g., flu immunization.

## **EXHIBIT B**

### **BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is made and entered into by and between Orthopaedics-Indianapolis, Inc. and Indiana Orthopaedic Hospital, LLC and their affiliated companies (collectively “OrthoIndy”), and U.C. Davis Health School of Medicine (“Business Associate”).

### **RECITALS**

- A. OrthoIndy and Business Associate have entered into, and may in the future enter into, one or more underlying contracts or purchase or sale orders to perform certain services, namely Affiliation Agreement (“Underlying Contracts”) that will require Business Associate to perform, or assist in the performance of a function or activity, or otherwise provide services of a type for OrthoIndy which qualifies Business Associate as a “Business Associate” as that term is defined by the Health Information Portability and Accountability Act of 1996 and all such regulations promulgated thereunder (hereinafter collectively referred to as “HIPAA”).
- B. Business Associate, in fulfilling its obligations for and on behalf of OrthoIndy pursuant to the Underlying Contracts, shall be expected to create or receive and maintain certain Protected Health Information and other forms of personal information, regardless of its form or medium, including but not limited to PHI maintained or transmitted using Electronic Media (hereinafter collectively referred to as “PHI”) from time to time that is the property of OrthoIndy.
- C. OrthoIndy and Business Associate desire to enter into this Agreement which shall supplement each of the Underlying Contracts, as required by HIPAA, in order to provide satisfactory assurances to OrthoIndy that Business Associate shall maintain appropriate, Administrative, Physical and Technical Safeguards to protect the confidentiality, integrity and availability of all such PHI in accordance with HIPAA as amended, including but not limited to the HIPAA amendments set forth in the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, in addition to all other applicable laws and regulations governing the privacy and security of other forms of nonpublic personal information (hereinafter collectively referred to as “Applicable Requirements”). Except as supplemented by this Agreement, the terms of the Underlying Contracts shall continue unchanged and shall apply with full force and effect as to the matters addressed therein.

**NOW THEREFORE, OrthoIndy and Business Associate agree as follows:**

- 1. **Definitions.** All capitalized terms and phrases in this Agreement shall have the same meanings as defined by Applicable Requirements and if not otherwise defined therein, shall have their ordinary and customary meaning:
- 2. **Restriction on Use and Disclosure of Protected Health Information.** Business Associate shall not Use or Disclose PHI, except as permitted or required by an Underlying Contract, this Agreement or Applicable Requirements. Business Associate agrees to limit its use, disclosures and request for PHI to the minimum amount necessary to perform its obligations. In addition to any other reporting requirements in this Agreement, Business Associate shall report to OrthoIndy any Use or Disclosure of PHI by Business Associate not permitted by this BAA within two (2) calendar days of discovery.

3. **Authorized Uses and Disclosures.** Except as otherwise limited in this Agreement, Business Associate may Use and Disclose PHI only in connection with the performance of the particular functions, activities or services set forth in the Underlying Contracts or as otherwise required by OrthoIndy, in writing, from time to time. Business Associate may also Use and Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; provided (a) the Disclosure is required under Applicable Requirements; or (b) Business Associate obtains reasonable assurances from the third party to whom the PHI is Disclosed that the PHI will be held confidential and will be Used or further Disclosed only for authorized purposes under Applicable Requirements, and the third party agrees to immediately notify the Business Associate if there is any reason to believe the confidentiality of the PHI has been breached or violated.

4. **Business Associate Obligations.**

- (a) **Vendor Questionnaire.** Business Associate shall, simultaneously with the execution hereof, fully and accurately complete and deliver to OrthoIndy the Vendor Questionnaire attached hereto as Exhibit A. Business Associate agrees to promptly notify OrthoIndy in the event Business Associate becomes aware of any response on such completed Vendor Questionnaire that is no longer accurate. Any misrepresentation on such Vendor Questionnaire shall be deemed a material breach of this Agreement by Business Associate.
- (b) **Compliance; Safeguards.** Business Associate represents and warrants that Business Associate shall comply with all Applicable Requirements and develop, implement, maintain and use appropriate Administrative, Physical and Technical Safeguards in order to preserve the confidentiality, integrity and availability of all PHI and to prevent any unauthorized Use or Disclosure, Security Incident or Breach involving PHI or other nonpublic personal information (hereinafter collectively referred to as “Incident”) in accordance with Applicable Requirements. Business Associate shall make all such documentation available to OrthoIndy for review upon request.
- (c) **Reporting of Incident.** Business Associate shall report to OrthoIndy any Incident no more than two (2) calendar days after Business Associate learns of, or has reason to believe that an Incident has occurred. Said report shall identify: (i) the nature of the Incident and all known facts and circumstances; (ii) the PHI that is known to be the subject of the Incident; (iii) the identity of all individuals associated with OrthoIndy whose PHI was subject to the Incident; (iv) any steps affected individuals should take to protect themselves from potential harm resulting from the Incident; (v) the persons who are known to have information about the Incident; (vi) the steps Business Associate is taking to investigate the Incident and to mitigate harm to individuals; and (vii) the corrective action that Business Associate took or will take to prevent future Incident. Business Associate shall submit a written report to OrthoIndy for review upon request. The parties agree that this section satisfies any notices necessary by Business Associate to OrthoIndy of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice

- to OrthoIndy shall be required. For purposes of this BAA, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.
- (d) **Cooperation.** Business Associate shall cooperate with OrthoIndy, and provide all necessary information, in a manner that allows OrthoIndy to comply with its Incident notification obligations in a timely manner.
  - (e) **Agents, Contractors, and Subcontractors.** Business Associate shall ensure that any agent, contractor, or subcontractor, that creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees, in writing to the same restrictions and conditions that apply to Business Associate under this Agreement, and in particular, Business Associate’s obligations set forth in Section 4 herein.
  - (f) **Patient’s Access to PHI.** Business Associate shall act in a manner that permits OrthoIndy to permit Patient Access to PHI in accordance with Applicable Requirements, including but not limited to 45 CFR §164.524.
  - (g) **Amendment of PHI.** Business Associate shall act in a manner that permits OrthoIndy to make amendments to PHI in accordance with Applicable Requirements, specifically 45 CFR §164.526.
  - (h) **Accounting of Disclosures.** Business Associate shall act in a manner that permits OrthoIndy to provide an accounting of Disclosures to Patients in accordance with Applicable Requirements, including but not limited to 45 CFR §164.528.
  - (i) **Practices, Books and Records.** Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of OrthoIndy, available to the Secretary for the purpose of determining OrthoIndy’s compliance with Applicable Requirements, subject to the Business Associate’s professional obligations with respect to such practices, books and records. For purposes of clarity, this provision does not obligate Business Associate to provide any information unrelated to the services provided to OrthoIndy by Business Associate pursuant to the Underlying Contracts.
  - (j) **Education.** Business Associate shall require all employees and subcontractors with access to PHI to undergo initial and annual training regarding HIPAA Privacy and Security Laws, Safeguards, and Reporting and provide evidence of completed education to OrthoIndy as may be requested by OrthoIndy from time to time.
  - (k) **Policies and Procedures.** Business Associate shall develop, implement, maintain and use written policies and procedures related to HIPAA Privacy and Security Laws, use and disclosure of PHI and unauthorized access to PHI. Written policies and procedures shall be provided to OrthoIndy, in writing, upon request of OrthoIndy.



- (l) **Cure of Noncompliance.** If OrthoIndy notifies Business Associate of any Incident which constitutes a material breach or violation of an Underlying Contract, this Agreement or Applicable Requirements, Business Associate shall immediately take reasonable steps to cure the Incident to end the violation, however this provision shall not be deemed to permit or excuse any such violation.
- (m) **Mitigation.** Business Associate shall take reasonable steps to mitigate, to the extent practicable, any Incident that is known to Business Associate or communicated to Business Associate by OrthoIndy that is the result of a material breach or violation of any Underlying Contract, this Agreement or Applicable Requirements, provided, however, that this provision shall not be deemed to permit or excuse any such violation.
- (n) **Legal Obligations.** In the event Business Associate believes it has a legal obligation to further Disclose any PHI in Business Associate's possession, including, but not limited to obligations that arise from the issuance of a third party discovery request, subpoena or court order, Business Associate shall notify OrthoIndy as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that OrthoIndy's rights and interests would not be prejudiced, as to the legal requirement pursuant to which Business Associate believes the PHI must be released. If OrthoIndy objects to the release of such PHI, Business Associate shall allow OrthoIndy to exercise any legal rights or remedies which either OrthoIndy or Business Associate might have with respect to the further Disclosure of PHI.
- (o) **Return or Destruction of the PHI.** Upon the termination of the business relationship between OrthoIndy and Business Associate, Business Associate shall return to OrthoIndy, or, at OrthoIndy's direction, destroy, all PHI that Business Associate has created or received and maintained or stored in any medium or storage system, subject to any professional responsibilities of Business Associate to maintain such information, in which event Business Associate shall maintain all such PHI in accordance with its custom and practice with respect thereto. Business Associate shall complete such return or destruction of PHI (if applicable) as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Underlying Contracts. Business Associate shall identify any recorded PHI of OrthoIndy that is in Business Associate's possession and which cannot feasibly be returned or destroyed to OrthoIndy, and Business Associate shall limit any further Use of that PHI to those purposes that make return or destruction of said PHI infeasible. Within said thirty (30) days, Business Associate shall certify to OrthoIndy, in writing and under oath, (i) that the return of all PHI has been completed; and (ii) that any PHI not returned will be Used or Disclosed by Business Associate only for those purposes which make return of the PHI infeasible or not required. Business Associate shall remain bound by the provisions of this Agreement, even after termination of any Underlying Contracts, until such time as all PHI has been (i) returned to OrthoIndy; or (ii) otherwise destroyed as provided in this Section; provided that the parties understand and agree that certain unrecorded information cannot be returned or destroyed, so the

Business Associate shall remain bound by the provisions of this Agreement so long as Business Associate possesses the PHI.

- (p) **De-identified Information.** Business Associate may create, use and disclose de-identified information if required for purposes of providing services pursuant to the Underlying Contract. Business Associate shall not use OrthoIndy's de-identified information for its own purposes, except on a case by case basis with OrthoIndy's separate prior written agreement for a proposed use. De-identification must comply with 45 CFR §164.502(d), and any such de-identified information must meet the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b), or as they may be amended from time to time.
  - (q) **Data Aggregation.** Except as the parties might otherwise agree in writing, Business Associate shall only provide data aggregation services on OrthoIndy's behalf if specifically directed to do so in writing.
  - (r) **SOC Reports.** Business Associate agrees upon request to provide a Service Organization Control 2 (SOC 2) Type 2 report to OrthoIndy if Business Associate provides the following types of services to OrthoIndy that involve electronic PHI: medical record services, data centers, IT managed services, software as a service, and other technology and cloud-computing based services.
  - (s) **Continuity of Business.** Business Associate shall ensure that any and all data that it manages on OrthoIndy's behalf shall be secured and backed up such that in the event that Business Associate's services or data center containing OrthoIndy's data, including PHI, suffers any adverse event, OrthoIndy shall be able to continue its business as intended with respect to the services provided by Business Associate pursuant to the Underlying Contract.
5. **Term of this Agreement.** This Agreement shall be effective upon the earlier of (i) the date executed by Business Associate in the event no changes have been made to this Agreement that are unacceptable to OrthoIndy in its sole discretion and (ii) when executed on behalf of both of the parties hereto, and shall continue in full force and effect until the effective date of the termination, cancellation, expiration or other conclusion of all Underlying Contracts executed by and between the parties hereto.
6. **Remedies.**
- (a) **Termination.** OrthoIndy may terminate the business relationship between OrthoIndy and Business Associate, including any Underlying Contracts, agreements, arrangements or understandings, whether or not in writing, upon which the business relationship is based and such other agreements, arrangements or understandings are hereby amended to permit such termination, if OrthoIndy determines that Business Associate has violated a material term of this Agreement or Applicable Requirements. Termination of the business relationship by OrthoIndy shall be in addition to and not in place of any other remedies that may be available to OrthoIndy.

(b) **Injunction.** Notwithstanding any other rights or remedies provided for in this Agreement, the parties agree that OrthoIndy may seek injunctive relief to prevent or stop the unauthorized Use or Disclosure of PHI by Business Associate, or any agent, subcontractor or other third party that creates, receives, maintains, or transmits PHI on behalf of Business Associate, without the necessity of proving actual damages or the occurrence of an unauthorized Use or Disclosure or other Security Incident.

7. **Incident Costs.** In the event of a Breach of Unsecured PHI which OrthoIndy or other entity with Privacy and Security Rules enforcement jurisdiction determines was proximately caused by Business Associate for which HIPAA requires notice to be provided to individuals and in addition to any other remedies that OrthoIndy may have under law, equity or contract, Business Associate shall be responsible for all costs associated with the incident, including but not limited to: (i) costs to print and mail the notification letters to affected individuals; (ii) media notification costs to the extent such media notification is required by applicable law; (iii) costs for Business Associate to set up a call center if Business Associate reasonably determines that such is necessary to handle inquiries; and (iv) credit monitoring costs if OrthoIndy reasonably determines that it is necessary to mitigate harm for affected individuals.
8. **Indemnification.** Business Associate shall indemnify and hold OrthoIndy and each of its officers, employees, directors, agents and representatives (“Indemnified Persons”) harmless from and against any and all claims, losses, costs, damages, or expenses, including reasonable attorneys’ fees, that arise out of any actions or omissions by Business Associate, or any of its officers, employees, directors, agents, representatives, contractors, or subcontractors which result in a breach of this Agreement or Applicable Requirements as that term is defined herein. Without limiting the foregoing, OrthoIndy shall give Business Associate prompt written notice of such claim, suit, or proceeding.
9. **Conflicting Laws and Obligations.** If Business Associate believes that it is unable to comply with any of its obligations under this Agreement due to any conflicting laws, regulations, pronouncements, or ethical obligations, it may seek a determination, or judgment, from a court of competent jurisdiction regarding its ability to comply with such obligations, so long as such actions will not cause OrthoIndy to be in violation of Applicable Requirements.
10. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered mail, first class postage prepaid, return receipt requested, or by prepaid overnight delivery service such that proof of delivery will be obtained, and shall be addressed as set forth below or to such other address as may be specified in a prior written notice to the other party:

**If to OrthoIndy:**

OrthoIndy  
8450 Northwest Blvd.

**If to Business Associate:**

\_\_\_\_\_

Indianapolis, Indiana 46278  
ATTN: \_\_\_\_\_

\_\_\_\_\_  
ATTN: \_\_\_\_\_

**With a copy to:**

Hall Render  
500 N. Meridian Street Suite 400  
Indianapolis, Indiana 46204  
ATTN: Colleen Powers

**With a copy to:**

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

Such notice shall be deemed to be given on the date it is deposited in the mail as stated above, on the date it is given to the overnight delivery service, or the date it is given personally to the party to whom it is directed. A notice shall be deemed to have been given personally to a party if it is handed to the representative of the party to whom the notice must be addressed or if left at his or her office located at the street address to which a notice would be mailed. Any notice required to be given promptly or immediately hereunder shall also be given by email to OrthoIndy at [cpowers@hallrender.com](mailto:cpowers@hallrender.com)

- 11. Amendment.** This Agreement may not be changed, modified, or amended except by a written agreement executed by an authorized representative acting on behalf of each of the parties.
- 12. No Waiver.** No waiver of one or more of the provisions of this Agreement or the failure to enforce any provision of this Agreement by either party shall be construed as a waiver of any subsequent breach of this Agreement, or a waiver of the right at any time thereafter to require strict compliance with all of its terms.
- 13. Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in it, and supersedes all prior discussions, agreements, and understandings of every kind and nature between them.
- 14. Headings.** The headings placed before the various paragraphs and subparagraphs of this Agreement are inserted for each of reference only, do not constitute a part of this Agreement, and shall not be used in any way whatsoever in the construction or interpretation of this Agreement.
- 15. Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of Indiana without reference to the choice of laws principles thereof.
- 16. Insurance.** Business Associate represents and warrants that during the term of the Underlying Contract, it shall maintain commercially reasonable and sufficient insurance to adequately underwrite the risks associate with the services performed under the Underlying Contract, including cybersecurity coverage for privacy and security risks. This includes Business Associate's maintenance of cyber liability insurance with minimum limits of \$5 million per occurrence.

- 17. Counterparts.** This Agreement and any amendment hereto may be executed in multiple counterparts, each of which is an original and all of which constitute one agreement. The exchange of a fully executed Agreement, in counterparts or otherwise, by facsimile transmission, electronic mail, “portable document format” (“pdf”), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall be sufficient to bind the parties to the terms and conditions of this Agreement.
- 18. No Third Party Beneficiaries.** This Agreement is to be effective only in regard to the rights and obligations of OrthoIndy and Business Associate to one another hereunder. It is expressly not the intent of the parties hereto to create any independent rights in any third party or to make any third party beneficiary to this Agreement and no privity of contract shall exist between third parties and each party hereto.
- 19. Assignment.** The Parties agree that either may assign this Agreement to any parent, subsidiary, affiliate, or successor in interest (including a successor in interest to substantially all the assets of the assigning Party), with written notice to the other Party. Except as noted, neither Party may assign this Agreement, absent written consent of the other Party, which shall not be unreasonably withheld. Any attempted assignment without such consent shall be void.
- 20. Geographic Limitations.** Business Associate shall not create, receive, maintain, transmit, use or disclose PHI outside of the United States without the written consent of OrthoIndy.
- 21. Damages.** Notwithstanding any provision in an Underlying Contract to the contrary, no limitation on the amount, type, or timing of losses, costs, damages, or expenses under any Underlying Contract shall apply to this Agreement or have any effect on the indemnification or other obligations of Business Associate hereunder.

**IN WITNESS WHEREOF**, the parties hereto have caused this Business Associate Agreement to be executed by their duly authorized representatives on the dates set forth below.

ORTHOINDY

[ Insert School/ Program Name]

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

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

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

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

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

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

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

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

DRAFT