

**PRACTICE ANALYTICS LLC --- ACCESS AGREEMENT**

This **ACCESS AGREEMENT** ( "**Agreement**" ), dated effective as of \_\_\_\_\_ ( "**Effective Date**" ), is by and between **PRACTICE ANALYTICS LLC**,, a Washington limited liability, with its principal place of business at 19215 SE 34<sup>th</sup> St, Suite 106-179, Camas, WA 98607 ( "**PA** ", or "**Company**" ), and \_\_\_\_\_ , with its principal place of business at \_\_\_\_\_ ( "**Client**" ).

In consideration of Client's right to use the PA Application and the PA Site pursuant to this Agreement, Client to the following:

1. **Definitions.** In addition to any other terms defined in the Agreement, the following terms have the following meanings:

1.1 "**Client Content**" means the data and information specific to the Client, its other Users, or any of their patients or customers, including, but not limited to, any health information or health records or other personal identifiable information of any of the foregoing, which Client or any its Users upload, store, distribute, or otherwise disseminate through, or which are otherwise used in relation to, the PA Application or PA Site.

1.2 "**Client User(s)**" has the meaning as set forth in Section 2.3 herein.

1.3 "**PA Application(s)**" means only the following Practice Analytics LLC's applications or programs which have been checked below (provided, however, this Section 1.3 can be amended by the parties to include or exclude any one or more of the following applications):

Hygiene Manager

1.4 "**PA Server**" means the computer software or hardware that serves the PA Site to Users across the internet.

1.5 "**PA Site**" or "**Site**" means PA's website at practice-analytics.com or app.practice-analytics.com.

1.6 "**Privacy & Information Policy**" has the meaning as set forth in Section 5 herein.

1.7 "**PA Pricing Policy**" has the meaning as set forth in Section 4 herein.

1.8 "**PA Rules**" means any rules developed by PA, from time to time and at any time, governing use of the PA Application or PA Site.

1.9 "**User(s)**" or "**you**" means Client and all of its Clients Users.

2. **Access Right; Conditions of Use.**

2.1 **Access Right.** Subject to all of the terms and conditions of this Agreement and any PA Rules, PA hereby grants to Client a non-exclusive, revocable, and limited right to access and use the PA Applications and PA Site in order to upload, store, distribute and use Client Content pursuant to the features and functions offered by the PA Applications and PA Site ("**Access Right**"). Notwithstanding the foregoing Access Right, PA has the right to change, suspend, or discontinue any (or all) aspects of the PA Application or the PA Site at any time, and from time to time, including the availability of content or features provided therein. Access Right granted to Client pursuant to this Agreement will immediately terminate upon the expiration, cancellation or termination of this Agreement for any reason.

2.2 **Conditions of Use.** Client agrees that the Access Right of Client and all other Users is subject to the following additional terms and conditions:

2.2.1 With regard to Client's and all other Users' use of the PA Application and PA Site: (a) Client and all other Users are solely responsible for obtaining and maintaining any equipment or ancillary services needed to connect to or access the PA Application via the PA Site; (b) Client and all other Users are prohibited from using the PA Application or the PA Site for any unlawful purpose or for any purpose that is prohibited by this Agreement or any PA Rules; (b) Client and all other Users are prohibited from using the PA Application or the PA Site or any PA Server in any manner that could damage, disable, overburden, or impair the PA Application, PA Site or any PA Server, or in any way that would interfere with any other party's use the PA Application or the PA Site; (c) Client and all other Users shall

not attempt to obtain or obtain any documents, material or data through any means not intentionally made available or provided for by the PA Application or the PA Site; and (d) Client and all Users shall not violate or attempt to violate any security features or protocols associated with the PA Application, PA Site or any PA Servers.

**2.2.2** Without limiting the foregoing, Client and all other Users further agree to the following:

(a) Client and all other Users shall **not** upload, store, distribute, or otherwise use any Client Content via the PA Application, PA Site or any PA Serve if such use: (i) would violate any local, state, federal or international law or regulations, including without limitation the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and implementing PHX 329,450,744v4 regulations (collectively, "**HIPAA Law & Regulations**"); or (ii) without limiting the foregoing, would infringe any patent, trademark, trade secret, copyright, or other intellectual or proprietary right of any party anywhere; and

(b) Client and all other Users have the lawful right under all local, state, federal or international law laws and regulations, including, without limitation any HIPAA Law & Regulations, to possess the Client Content and to upload, store, distribute, and otherwise use the Client Content via the PA Application, PA Site or the PA Server.

**2.2.3** In addition to any other right in this Agreement, PA has the right to immediately suspend and/or terminate this Agreement or any End User Agreement of Client or any User if PA determines that Client or any other User has violated any provision in this Agreement, any End User Agreement, or any PA Rules.

### **2.3 Permitted Users Through Client; Client User Accounts.**

**2.3.1** Client shall restrict use of the Access Right solely to only those employees of Client ("**Client User(s)**") who (i) have been issued a "Client User Account" (as defined immediately below) by PA; and (ii) have consented to PA's then current end user agreement binding that Client User to terms and conditions similar to those in this Agreement ("**End User Agreement**"). For purposes of this Agreement, a "**Client User Account**" will include (at PA's determination) such information as Client User name, password, other login credentials, and other Client User information along with all Client Content of that User. Each User will only provide true, accurate, current, and complete personal information and records as prompted during the creation of each User's Client User Account and is responsible for maintaining the accuracy of the same at all times thereafter. Client is required to immediately notify PA of each Client User that is no longer an employee of Client and, at that time, PA has the right to immediately terminate the applicable Client User Account.

**2.3.2** The Client agrees that each User (including without limitation each Client User) is only permitted access to and use of the PA Application and PA Site in accordance with this Agreement and the End User Agreement. Client and each User hereby agrees that: (i) Client will be solely responsible for all use of the PA Application and PA Site by Client and each User; and (ii) without limiting the foregoing, Client shall be responsible for compliance by each User of this Agreement and each End User Agreement and for any breach by each User of any of the foregoing. Client hereby indemnifies, defends and hold harmless PA from (a) all damages arising from any misuse of the PA Application or PA Site by any employees, contractors or other agents of Client or all other Users; or (b) without limiting the foregoing, any uses by any such persons that are not in compliance with the this Agreement or the End User Agreement.

**2.3.3** Client must identify to PA the Client's authorized officials who shall be the parties that manage the relationship between PA and all Users (hereinafter, the "**Authorized Requester(s)**"). PA is only required to take instructions from an Authorized Requester on behalf of the Client with regard to any rights and obligations of Client under this Agreement and with regard to any other matters related to or arising out of this Agreement. Without limiting the generality of the foregoing, Client agrees that only Authorized Requesters have the right to supply PA with the following information, and PA is only required to accept the following information from an Authorized Requester: (i) the names of Users that will be added or deleted; (ii) medical or other personal information about Client and the other Users. The Authorized Requesters must provide PA with all information about Users that is requested by PA in order to allow PA to establish the Client User Accounts as contemplated above.

### **3. Copyrights and Other Intellectual Property Rights; Reservation of Rights.**

**3.1 Must Respect IP Rights of Others.** PA's policy is to respect the copyright and intellectual property rights of others. PA has the absolute right to (i) immediately terminate, without warning, the accounts of Client or any other User who, in PA's determination, infringes upon the copyright or intellectual property rights of others, and (ii) remove any Client Content from the PA Application and PA Site that, in PA's determination, may infringe the copyright or other intellectual property rights of any third party.

## 3.2 Reservation of Rights by PA.

3.2.1 PA or its licensors, solely and exclusively own all rights, title and interest in and to all inventions, patents, trademarks/service marks, logos, images, graphics, content, reports, analysis, data, formulae, processes, techniques, software, website designs, all other copyrights, and all other intellectual property rights provided in, made available by using, or otherwise contained in or arising out of, the PA Application or the PA Site, or which is otherwise provided in furtherance of this Agreement (collectively “PA IP Assets”). For purposes of clarify, the PA IP Assets do not include “Client Content” as such term is defined herein. Except for the limited Access Right, this Agreement shall not be interpreted to grant any right (by implication, estoppel or otherwise) to Client or any User to use any PA IP Assets or to any intellectual property rights in any PA IP Assets. PA reserves, without prejudice, all rights, title and interest in and to all PA IP Assets.

3.2.2 In addition to all other conditions in this Agreement, each User agrees that: (i) User shall *not* modify, disassemble, decompile or reverse translate or create derivative works from any of the PA IP Assets or otherwise attempt to derive any source code of the same or let any third party do the same; (ii) no copyrighted material, content, or any other PA IP Assets may be modified, copied, displayed, transferred, distributed, sold, published, broadcast or otherwise used except as expressly stated herein, in such material or in this notice without the express prior written permission of PA (which PA may or may not grant in its sole discretion); (iii) Users shall not remove, alter, cover or obscure any copyright notices or other proprietary rights notices of PA or any other party placed on or embedded in any PA IP Assets and shall otherwise retain all such notices on all copies of the same; and (iv) use of the PA IP Assets is expressly prohibited by anyone who is not an authorized User under this Agreement. Unauthorized use is a violation of copyright and other intellectual property rights and is actionable under law.

3.3 Survival. Client agrees that the terms and conditions of this provision survive the cancellation, expiration or termination of this Agreement for any reason.

4. Fees. As a condition to Client’s and other User’s use of the PA Applications and PA Site, Client agrees to pay PA all fees, including, without limitation, any installation fees, maintenance fees, technical support fees, and ongoing access fees (collectively, “Fees”), set forth in, and in accordance with the schedules and procedures set forth in, PA’s Pricing Policy document (“PA Pricing Policy”). PA’s current PA Pricing Policy, which may be amended at time to time or at any time as set forth therein, is available here: [practice-analytics.com/pricing/pricing-policy](http://practice-analytics.com/pricing/pricing-policy).

5. Privacy & Information Policy. PA’s policy and any other terms and conditions of use that govern the PA’s use of any User information (including without information a User’s health information, health records, other personal identifiable information or any other Client Content) are set forth in PA’s Privacy & Information Policy , which is incorporated into this Agreement in its entirety by this reference (“PA Privacy & Information Policy”). User hereby agrees to comply with the PA Privacy & Information Policy, as it may be amended from time to time and at any time by PA. PA’s current PA Pricing Policy is available here: Exhibit A. |

## 6. Service Levels; Disclaimers; Limitations of Liability.

6.1 Service Levels. PA’s service level commitments for the PA Application (“PA Service Levels”) are limited to those explicitly set forth in the PA Pricing Policy. User hereby acknowledges and agrees that: (i) it has reviewed the PA Service Levels; and (ii) the PA Service Levels, as may be amended from time to time and at any time by PA’s amendment of its PA Pricing Policy, are hereby incorporated into this Agreement by this reference.

6.2 Additional User Acknowledgements. Client and each User acknowledges and agrees that: (i) this Agreement with PA or User’s use of the PA Applications or PA Site does *not* constitute the provision of any medical advice by PA; (ii) this Agreement, User’s access to the PA Application or PA Site, or User’s uploading, storing, distribution, or other uses of the PA Application or PA Site, does *not* create a physician-patient relationship between User and PA; (iii) use of the PA Application or PA Site does *not* constitute the services of a licensed, trained physician or health professional nor does it constitute a substitute or replacement for User’s need to obtain medical advice of a physician or trained health professional licensed in User’s state; (iv) User should consult a physician licensed in User’s state regarding all matters relating to User’s health and regarding the significance and meaning of all personal and medical information stored or derived by using the PA Application or PA Site; and (v) User hereby agrees that User will *not* make any health or medical related decisions based in whole or in part on User’s use of the PA Application or PA Site.

### 6.3 **Additional Disclaimers and Notices.**

PA DOES NOT OFFER OR PROVIDE ANY MEDICAL OR ANY OTHER HEALTH CARE ADVICE. ANY CONTENT ON THE PA APPLICATION OR PA SITE IS FOR INFORMATIONAL PURPOSES ONLY. WE URGE YOU TO CONSULT YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROVIDER WITH ANY QUESTIONS OR CONCERNS YOU MAY HAVE ABOUT A MEDICAL CONDITION, DIAGNOSIS, OR TREATMENT.

EXCEPT FOR THE PA SERVICE LEVEL COMMITMENTS EXPLICITLY SET FORTH IN THE PA PRICING POLICY (AS THEY MAY BE AMENDED FROM TIME TO TIME OR AT ANY TIME), PA PROVIDES THE PA APPLICATION AND PA SITE ON AN "AS-IS," BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, OR NON-INFRINGEMENT.

PA DOES NOT GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM THE PA APPLICATION OR PA SITE OR FROM A USER'S HEALTH INFORMATION OR HEALTH CARE PROVIDER. RECORDS FROM ANY SUCH HEALTH INFORMATION OR HEALTH CARE PROVIDER MAY BE INCOMPLETE AND PA HAS NO MEANS OF VERIFYING WHETHER OR NOT THEY ARE COMPLETE OR ACCURATE. PA DOES NOT PROVIDE LEGAL REPRESENTATION FOR ANY DISPUTE WITH A HEALTH INFORMATION OR HEALTH CARE PROVIDER OVER ACCESS TO YOUR PATIENT RECORDS. ALL USERS AGREE THAT THEY USE THE PA APPLICATIONS AND PA SITE AT THEIR OWN RISK. CONTENT PROVIDED BY THE PA APPLICATION OR PA SITE IS DEVELOPED FOR SOLE USE IN THE UNITED STATES.

### 6.4 **Limitation of Liability.**

IN NO EVENT SHALL PA, ITS SUCCESSORS, OR ASSIGNS, OR AFFILIATES, OR ANY OF THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, LOSS OF DATA), HOWEVER AND WHEREVER ARISING, INCLUDING, WITHOUT LIMITATION, ARISING OUT OF (A) YOUR USE OF THE PA APPLICATION OR PA SITE; (B) DELAYS OR FAILURES OF THE PA APPLICATION OR PA SITE; (C) PA'S PERFORMANCE UNDER THIS AGREEMENT, INCLUDING ANY BREACHES BY PA UNDER THIS AGREEMENT, EVEN IF PA HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN THE EVENT, HOWEVER, THAT ANY LIABILITY IS IMPOSED ON PA, IN NO EVENT SHALL THE TOTAL LIABILITY OF PA ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PA APPLICATION OR PA SITE EXCEED THE LESSER OF (i) THE TOTAL AMOUNT PAID BY YOU TO PA IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM AROSE, OR (ii) ONE THOUSAND DOLLARS (\$1,000). You acknowledge and agree that the foregoing limitations are an essential element of the Agreement between the parties and that in the absence of such limitations the pricing and other terms set forth in this Agreement would be substantially different.

7. **Indemnification.** Each User hereby agrees to indemnify, defend, and hold harmless PA and its successors, or assigns, or its parents, subsidiaries, or affiliates, or any of their officers, directors, shareholders, employees, or agents for, from, and against any claim or demand, losses, or liabilities (including attorneys' fees) made by any third party due to or arising out of your conduct, each User's use (or use by anyone on User's behalf, whether authorized or not by User) of the PA Application or PA Site, any alleged violation of this Agreement by User, breach of any representations or warranties by User, or any alleged violation by User of any applicable law or regulation. PA reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, but doing so shall not excuse your indemnity obligations.

### 8. **Term and Termination; Survival.**

8.1 **Term; Termination.** The term of this Agreement will begin on the Effective Date (as defined above) and continue until a termination or cancellation of this Agreement, including any termination as set forth herein. If, in PA's determination, the Client or any other User violates this Agreement or any End User Agreement, PA reserves the right to take any action it deems appropriate, including, but not limited to, termination of this Agreement or any and all of the End User Agreements. Upon the cancellation, expiration or termination of this Agreement or any End User Agreement for any reason, the following shall apply:

(i) User will no longer have any rights under this Agreement (of any applicable End User Agreement), including, but not limited to, no further Access Right;

(ii) subject to creating the External Client Content Storage Device pursuant to Section 8.1(iii) below, PA reserves the right to delete from its PA Servers any and all Client Content and any other information contained in all Client Accounts;

(iii) PA is not required to provide mail or web page forwarding upon the expiration, cancellation or termination of this Agreement for any reason; and

iv) PA will download onto an external storage device ("External Client Content Storage Device") all of the Client Content in existence as of the effective date of the termination of this Agreement and will make it available to the Client for pickup by Client for a period of 45 days after said termination date; provided, however, after the expiration of that 45 day period, PA can purge all Client Content from its PA Servers and PA is no longer obligated to retained the External Client Content Storage Device whether or not the Client has picked up a copy of the same by that date.

**8.2 Survival.** In the event of the termination, cancellation or expiration of this Agreement for any reason, the terms and conditions of Sections 3, 6, 7, this 8 and 9 of this Agreement (and any other provisions that by their nature should survive) shall survive the cancellation, termination and expiration of this Agreement for any reason.

## **9. Additional Provisions.**

**9.1 Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given hereunder will be given in writing by personal delivery, express courier, facsimile, email, or United States Postal Service (postage prepaid), to either User or PA at the address or number or email address set forth in the signature block to this Agreement, or to such other addresses or numbers or email addresses as either Party may hereafter indicate pursuant to this Section. Unless otherwise provided in this Agreement, any communication or notice so addressed and mailed will be deemed to be given five (5) days after mailing. Unless otherwise provided in this Agreement, any communication or notice delivered by facsimile or email will be deemed to be given when the transmitting machine generates a receipt of a successful transmission of the notice or when the email is sent. Unless otherwise provided in this Agreement, any communication or notice given by personal delivery will be deemed to be given immediately upon such delivery, provided such delivery is made to the person indicated below.

**9.2 Remedies.** If any User breaches any provision of this Agreement or in any End User Agreement, PA may exercise any remedies available at law, equity or contract, including without limitation those set forth elsewhere in this Agreement. Without limiting the foregoing, User hereby acknowledges that monetary damages may not be a sufficient remedy for unauthorized use of the PA Application or PA Site or any other PA IP Assets, and therefore User agrees PA shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court or arbitration panel of competent jurisdiction without necessity of posting a bond and without having to plead and prove lack of an adequate remedy at law.

**9.3 Attorney Fees.** If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court and, if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

**9.4 Governing Law/Choice of Venue.** This Agreement will be governed by the laws of the State of Washington without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between User and PA (including any affiliate of the same) that arises from or relates to this Agreement, will be brought and conducted solely and exclusively within the state and federal courts located in Clark County, Washington. By execution of this Agreement, each party hereby waives any claim that such courts constitute a forum non conveniens, and further consents to the in personam jurisdiction of such courts.

**9.5 Assignments.** This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that User may not assign this Agreement, in whole or in part, without the prior written consent of PA. Any purported assignment in violation of this Section shall be void. PA has the right to assign this Agreement to any third party.

**9.6 Enforceability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**9.7 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument and be binding upon the parties.

**9.8 Amendment.** This Agreement may only be modified by a written agreement dated subsequent to the date of this Agreement and signed by both parties; provided, however, Client and each User acknowledges and agrees

that PA has the right to amend, at any time and from time to time, the PA Pricing Policy (including, without limitation, the PA Service Levels therein), the PA Rules, and the PA Privacy & Information Policy, and each Client and User will be bound by each such amended version that is in effect at the time the Client or User next uses any component of the PA Applications or PA Site.

**9.9 Entire Agreement; Modification; Waiver.** This Agreement, along with all attachments referenced above (including, without limitation, the PA Pricing Policy (including, without limitation, the PA Service Levels therein), the PA Rules, and the PA Privacy & Information Policy) constitutes the entire agreement between the parties with respect to the subject matter hereof.. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of PA, User, their agents, or employees, but only by an instrument in writing signed by an authorized employee of PA and User. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date above.

**COMPANY**

[\_\_\_\_\_]

**PRACTICE ANALYTICS, LLC ,**

[\_\_\_\_\_]

a Washington limited liability company

a \_\_\_\_\_ corporation

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

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

Jeffrey D. Clark

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

President

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

19215 SE 34<sup>th</sup> St, Suite 106-179

Address: \_\_\_\_\_

Camas, WA 98607

City, St, Zip: \_\_\_\_\_

Phone: 360-335-3850

Telephone: \_\_\_\_\_

Facsimile: 360-335-3850

Facsimile: \_\_\_\_\_

Email: jclark@practice-analytics.com

E-Mail: \_\_\_\_\_