

PORTAL ACCESS AND USER AGREEMENT

This Portal Access and User Agreement (this “Agreement”) is made by and between Quantum Interventional Sports & Spine Medicine, PLLC d/b/a Quantum Pain & Sports Medicine, a Texas professional limited liability company (“Group”), and you the “User”. Group and User may be referred to as a “Party” and collectively as the “Parties”. THIS AGREEMENT GOVERNS USER’S ACCESS TO AND USE OF THE PORTAL. BY CLICKING THE BOX INDICATING USER’S ACCEPTANCE OF THIS AGREEMENT, USER ACKNOWLEDGES THAT USER HAS READ, UNDERSTOOD, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

AGREEMENT TERMS AND CONDITIONS

1. Purpose. Group maintains a portal to allow User to access certain of Group’s consenting patients’ (the “Patient(s)”) electronic protected health information (“ePHI”) (the “Portal”). The Portal offers User a secure way to view Patient’s ePHI. User’s access is limited to the ePHI of Patients that (a) User actively represents or treats and (b) who have consented to the release of their ePHI to User.

2. Authority and Relationship of the Parties. Group and User are and shall remain independent contractors throughout the terms of this Agreement. Nothing in this Agreement shall be construed (a) to constitute a partnership, joint venture, agency or any relationship other than independent contractors between Group and User, or (b) to allow either Party to exercise control or direction over the manner or method by which the other Party performs their respective professional services.

3. Access and Use of Portal.

3.1 *Authorized Users.* User agrees that User shall only access and use the ePHI of Patients User represents or treats and has valid authorization to access. User may request that User’s employees be permitted access to the Portal (“Authorized Users”) if such employees (a) have received education and training by User on the restriction on the use of the Portal under this Agreement and by law, and (b) have agreed in writing to comply with such terms and restrictions. At all times, User is responsible for Authorized Users’ compliance with the terms of this Agreement and for ensuring that the Portal is not accessed or used by any employees or other persons who are not Authorized Users. User shall provide Group with a list of Authorized Users as well as proof that such persons have been trained to protect their portal user ID and password, as well as the Patient’s ePHI (the “Authorized User List”).

3.2 *Safeguards for ePHI.* User will implement and maintain appropriate safeguards to prevent the unlawful use or disclosure of ePHI, including administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any ePHI, if any, that User accesses on the Portal. Upon request of Group, User will provide evidence to Group that these safeguards are in place and are properly managed within a reasonable amount of time.

4. Representations and Warranties; Covenants.

4.1 *User.* User hereby represents, warrants, and covenants to Group that:

(i) User will only use the Portal to access information related to the Patients that User actively represents or treats;

(ii) User has received authorization from the Patient to receive and use Patient's ePHI;

(iii) throughout the term, User shall not, and will not allow any of User's employees or third parties to, use or disclose any ePHI, except in compliance with this Agreement and Applicable Law; and

(iv) User shall notify Group of an unauthorized release or disclosure of ePHI within twenty four (24) hours of User's identification of such unauthorized release or disclosure.

5. Responsibilities of Group.

5.1 Throughout the term of this Agreement, Group shall:

(i) collect and keep on file Patient's Authorization to Release Patient Information; and

(ii) use Group's best efforts to regularly update the Portal with accurate information.

6. Portal Availability. Group will use its best efforts to provide 24 hour daily availability of the Portal. However, Group makes no representation or warranty that 24 hour service will be available and User agrees that Group does not bear any liability, and User shall not incur any damages, as a result of the Portal being unavailable. User agrees and acknowledges that the Portal will, at times, be unavailable due to regularly scheduled maintenance, service upgrades or other mechanical or electronic failures.

7. Term and Termination.

7.1 *Term.* The Portal shall be available to User until, or unless, terminated by the User or by Group in accordance with the terms of this Agreement.

7.2 *Termination by Group.* Group shall not have any ongoing obligation to provide the Portal; thus, Group may cease to operate the Portal at any time and for any reason. Without limiting the foregoing, Group may cease to provide User access to the Portal in the event of:

(i) termination of Group's relationship with Patient;

(ii) any dispute or termination of Group's relationship with User;

(iii) Patient's revocation of their authorization for Group to release Patient's information to User;

(iv) User's use of the Portal in a manner that Group, in its sole discretion, considers improper or unacceptable; or

(v) any violation by User of the terms and conditions of this Agreement.

7.3 *Termination for Change in Law.* Should either party reasonably conclude that any portion of this Agreement is or may be in violation of Texas or federal law or subsequent enactment by federal, Texas, or local authorities, or if any change or proposed change would materially increase the cost of Group's performance hereunder, or otherwise adversely affect Group's ability to perform hereunder, either party shall have the right to terminate this Agreement immediately and without penalty.

7.4 *Termination Upon Material Breach.* Either Party may terminate this Agreement in its entirety for a material breach of this Agreement. Any such termination for cause under this Section must be effected by giving written notice to the defaulting Party describing the event of default with reasonable specificity and subject to a reasonable period to cure. In the event of termination of this Agreement for any reason, each Party shall take all reasonable actions necessary to mitigate damages from or related to the termination.

7.5 *Termination Without Cause.* Notwithstanding the foregoing, either Party may terminate this Agreement, without cause, at any time upon ten (10) days written notice to the other Party.

8. Confidentiality. The User acknowledges that the Portal, and certain information accessed on the Portal, including ePHI, is confidential information (the "Confidential Information"). The User agrees to hold Confidential Information in strict confidence and not to further disclose such Confidential Information. The User may provide Confidential Information to employees in the User's organization only on a strict "need-to-know" basis and the User may disclose Confidential Information to relevant clients, as required. The User may use the Confidential Information from the Portal solely in relation to the scope of User's engagement by Patient. User may not share information about the Portal, including its function or design, to third-parties, including but not limited to Group's Competitors. Upon termination of this Agreement, or at Group's written request, the User must cease use of the Confidential Information. Any breach of this Agreement may result in harm to Group for which damages would be an inadequate remedy. Therefore, in addition to its rights and remedies otherwise available at law, Group will be entitled to equitable relief, including both a preliminary and permanent injunction, if such breach occurs. This Agreement imposes no obligation on the User with respect to Confidential Information which the User can satisfactorily establish (i) the User possessed, without an obligation to maintain its confidentiality, prior to the User obtaining same from Group; (ii) is or becomes generally known to the public through no act or omission by the User or without violation of this Agreement; (iii) the User obtained from a third party who had the right to disclose it, without an obligation to keep such information confidential; (iv) the User independently developed without the use of Confidential Information; or (v) the User has obtained in response to a valid order by a court or other governmental body, as otherwise required by law.

9. Limitation of Liability. GROUP ASSUMES NO LIABILITY OR RESPONSIBILITY FOR HOW USER OR USER'S EMPLOYEES OR OTHER PERSONS USE THE PORTAL. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL GROUP HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNATIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO UNAVAILABILITY OF PORTAL ACCESS, LOSS OF BUSINESS OR GOODWILL OR LOSS OF DATA, IN ANY WAY ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OR OTHERWISE HAS REASON TO KNOW OR KNOWS OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL APPLY EVEN IF AND TO THE EXTENT ANY OTHER REMEDY PROVIDED UNDER THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

10. Indemnification. To the extent allowed by applicable law, User agrees to defend, indemnify and hold harmless Group and any of its directors, officers, shareholders, and employees (each an "Indemnified Party") from and against any and all third party claims and all liabilities, assessments, losses, costs or damages resulting from or arising out of or related to User's use of the Portal, or any breach by User of any term or condition of this Agreement. If any such action shall be brought against any Indemnified Party, they shall notify User in writing and User shall assume and control the defense and settlement of each such action, including the employment of counsel and payment of all expenses. Any Indemnified Party shall have the right to employ separate counsel in any such action and participate in the defense, at their own cost unless otherwise agreed to by User.

11. Miscellaneous.

11.1 *Assignment.* This Agreement may not be assigned by either party without the prior written consent of the other, and any attempted assignment without such consent shall be null and void.

11.2 *Amendment.* This Agreement may only be amended by a written agreement duly executed by persons authorized to sign agreements on behalf of each Party.

11.3 *Governing Law and Venue.* The interpretation and construction of this Agreement, to the extent the particular issue is controlled by state law, shall be governed by and construed in accordance with the laws of the State of Texas. The Parties submit to the exclusive jurisdiction of the courts located in Dallas County, Texas for the resolution of any disputes between the Parties.

11.4 *Use of Names.* Except as specifically permitted in this Agreement, neither party will use the name, mark(s), trade names, logos or acronyms of the other in any publicity, news release, marketing materials, or other public announcement whether written or oral, including but not limited to websites, fact sheets or promotional materials, without the prior written approval of the other party.

11.5 *Notices.* All notices required and other communications provided for by this Agreement shall be in writing and shall be either (i) delivered by hand, (ii) made by facsimile

transmission, (iii) sent by overnight courier or overnight mail, (iv) sent by certified mail, return receipt requested, postage prepaid, (v) or via electronic mail with read receipt requested.

11.6 *Waivers and Remedies.* The failure by a Party to insist on strict adherence by the other Party to any term of this Agreement shall not operate or be construed as a waiver by that Party of the right to exercise any right or remedy that it may possess under this Agreement, nor be construed as a bar to the exercise of such right or remedy by such Party with respect to such failure or upon the occurrence of any subsequent breach or violation.

11.7 *Headings; Certain Rules of Construction.* The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. The terms “including” or “include” shall mean “including, without limitation,” or “include, without limitation,” as the case may be. References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. Any of the terms defined in this Agreement may, unless the context requires, be used in the singular or the plural, depending on the reference.

11.8 *Benefits, Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the respective Parties and their permitted assigns and successors in interest.

11.9 *Severability.* The Parties to this Agreement acknowledge and agree that it is their intent and understanding that this Agreement complies with all applicable federal, state and local laws, rules, regulations, court decisions and governmental restrictions (collectively “Law”), and that at all times they intend to be in compliance with such Law. Should any term or provision of this Agreement be deemed invalid or void or unenforceable either in its entirety or in a particular application because it is in conflict with or violates any Law, the remainder of this Agreement shall nonetheless remain in full force and effect and, if the subject term or provision is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision shall remain in full force and effect with respect to all other applications. In addition, the Parties agree to amend this Agreement to bring the Agreement in compliance with said Law.

11.10 *Survivability.* Upon termination of User’s access to the Portal, in addition to any survival rights which may be expressly provided for herein, any provisions in this Agreement which expressly or by implication are to be in effect after such termination also shall survive. All such provisions shall be binding for such period of time as may reasonably be required in order to give full effect to the intended application of such provision.

11.11 *Complete Agreement.* This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral, with respect to the same subject matter.