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Suggested E-Referral Agreement Amendments

TO BE ADDED TO REPRESENTATIONS AND WARRANTIES OF E-REFERRAL CONTRACTOR (“Contractor”) AGREEMENT:

Notwithstanding anything herein to the contrary, Contractor represents and warrants that:

1. Contractor is not owned, either directly or indirectly, by any physician or an immediate family member of a physician;
2. Any direct or indirect financial arrangement between the Contractor and any physicians, or immediate family members thereof (hereinafter collectively referred to as “Referral Sources”):
   1. complies with all federal and state laws, rules, guidelines and regulations, including without limitation, the federal self-referral law and corresponding regulations known as the “Stark Law”,
   2. has a fair market value basis,
   3. is not determined in any manner that takes into account the volume or value of referrals or other business generated by a Referral Source for a hospital or any of its affiliates, and
   4. meets all the requirements of the indirect compensation exception under the Stark Law, if applicable; and
3. Contractor’s structure and arrangements with acute-care and other healthcare providers participating in Contractor’s communication network comply with all federal and state laws, rules, guidelines and regulations, including without limitation, the federal and state anti-kickback and anti-fraud and abuse laws.

The foregoing representations and warranties shall be ongoing and continually monitored during the term of this Agreement. Contractor shall immediately notify [Company, nursing facility name, etc.] of any change in the status of or breach of any of the foregoing representations and warranties [, as amended]. Any breach of the foregoing representations and warranties shall authorize Company to terminate this Agreement immediately. Company has relied on the foregoing representations and warranties of Contractor in entering into this Agreement [, as amended] and does not intend make or receive any payments, directly or indirectly, for the referral of items or services in violation of any federal or state anti-kickback or anti-fraud and abuse laws.

Contractor acknowledges and agrees that the foregoing representations and warranties are expressly excluded from any limitations otherwise provided in the Agreement. Contractor shall defend, at its expense, any third-party action, including without limitation any action brought by a governmental agency, against Company with respect to the foregoing representations and warranties. Contractor shall indemnify and hold harmless Company and pay the actual damages, costs and expenses, including reasonable attorney’s fees, incurred by Company in any such action attributable to any such breach or violation by Contractor of the foregoing representations and warranties; provided however, Company (i) shall promptly notify Contractor of any such claim, (ii) allow Contractor to control the defense of any such claim, and (iii) agrees to refrain from any settlement of such claim without the Contractor’s prior written consent.