

## RESOLUTION AGREEMENT

### I. Recitals

1. **Parties.** The Parties to this Resolution Agreement (“Agreement”) are:
  - A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).
  - B. Korunda Medical, LLC (“Korunda Medical”), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. Korunda Medical is a healthcare company that offers comprehensive primary care and interventional pain management. Korunda Medical’s main office is located in Naples, Florida, with five satellite locations throughout Florida. Korunda Pain Management (KPM) is a DBA for five interventional pain physicians. Korunda Medical Institute (KMI) is a DBA for two primary care physicians. HHS and Korunda Medical shall together be referred to herein as the “Parties.”
2. **Factual Background and Covered Conduct.** On March 6, 2019, OCR received a complaint alleging Korunda Medical in not in compliance with the Privacy Rule. The complaint alleged Korunda refused to provide an individual with access to her protected health information in the requested format.<sup>1</sup> On March 18, 2019, OCR provided Korunda Medical with technical assistance regarding the individual’s right of access to protected health information and closed the complaint. On March 22, 2019, OCR received a second complaint concerning Korunda’s continued noncompliance with the requirements of the Privacy Rule concerning access (45 C.F.R. § 164.524). On May 8, 2019, HHS notified Korunda Medical of its investigation of Korunda Medical’s compliance with the HIPAA Rules promulgated by HHS pursuant to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936.

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<sup>1</sup> Complainant also alleged that Korunda does not charge individuals a reasonable, cost-based fee for access to their PHI.

HHS's investigation indicated that the following conduct occurred (Covered Conduct):

- a. Korunda Medical failed to provide timely access to protected health information from April 22, 2019 to May 12, 2019. *See* 45 C.F.R. § 164.524;

3. **No Admission.** This Agreement is not an admission of liability by Korunda Medical.

4. **No Concession.** This Agreement is not a concession by HHS that Korunda Medical is not in violation of the HIPAA Rules and not liable for civil money penalties.

5. **Intention of Parties to Effect Resolution.** This Agreement is intended to resolve OCR Transaction Number 19-337386 and any violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

## II. Terms and Conditions

6. **Payment.** HHS has agreed to accept, and Korunda Medical has agreed to pay HHS, the amount of **\$85,000.00** ("Resolution Amount"). Korunda Medical agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearing house transaction pursuant to written instructions to be provided by HHS.

7. **Corrective Action Plan.** Korunda Medical has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If Korunda Medical breaches the CAP, and fails to cure the breach as set forth in the CAP, then Korunda Medical will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. **Release by HHS.** In consideration of and conditioned upon Korunda Medical's performance of its obligations under this Agreement, HHS releases Korunda Medical from any actions it may have against Korunda Medical under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release Korunda Medical from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

9. **Agreement by Released Party.** Korunda Medical shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. Korunda Medical waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a) and 45 C.F.R. Part 160, Subpart E, and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

**10. Binding on Successors.** This Agreement is binding on Korunda Medical and its successors, heirs, transferees, and assigns.

**11. Costs.** Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

**12. No Additional Releases.** This Agreement is intended to be for the benefit of the Parties only and by this instrument the Parties do not release any claims against or by any other person or entity.

**13. Effect of Agreement.** This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.

**14. Execution of Agreement and Effective Date.** The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by the last signatory ("Effective Date").

**15. Tolling of Statute of Limitations.** Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty ("CMP") must be imposed within six (6) years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, Korunda Medical agrees that the time between the Effective Date of this Agreement (as set forth in Paragraph 14) and the date the Agreement may be terminated by reason of Korunda Medical's breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. Korunda Medical waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the covered conduct identified in paragraph I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.

**16. Disclosure.** HHS places no restriction on the publication of the Agreement.

**17. Execution in Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

**18. Authorizations.** The individual(s) signing this Agreement on behalf of Korunda Medical represent and warrant that they are authorized by Korunda Medical to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

**For Korunda Medical**



\_\_\_\_\_  
Zdenko Korunda, M.D.  
Medical Director

12/06/2019

\_\_\_\_\_  
Date

**For the United States Department of Health and Human Services**



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Marisa M. Smith, Ph.D.  
Regional Manager  
Office for Civil Rights  
Southwest Region

12/11/19

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Date

## Appendix A

### CORRECTIVE ACTION PLAN BETWEEN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND KORUNDA MEDICAL, LLC

#### I. Preamble

Korunda Medical, LLC (referred to herein as "Korunda Medical") hereby enters into this Corrective Action Plan ("CAP") with the United States Department of Health and Human Services, Office for Civil Rights ("HHS"). Contemporaneously with this CAP, Korunda Medical is entering into a Resolution Agreement ("Agreement") with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. Korunda Medical enters into this CAP as part of the consideration for the release set forth in paragraph II.8 of the Agreement.

#### II. Contact Persons and Submissions

##### A. Contact Persons.

Korunda Medical has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Zdenko Korunda, M.D.  
Medical Director  
Korunda Medical, LLC  
4513 Executive Drive  
Naples, FL 34119  
Phone (239) 431-6464  
Fax (239) 594-5637  
Email:

HHS has identified the following individual as its authorized representative and contact person with whom Korunda Medical is to report information regarding the implementation of this CAP:

Marisa M. Smith, Ph.D.  
Regional Manager  
Office for Civil Rights, Southwest Region  
U.S. Department of Health and Human Services  
1301 Young Street, Suite 1130  
Dallas, TX 75202  
Voice Phone (214) 767-6973  
Fax: (214) 767-0432  
[marisa.smith@hhs.gov](mailto:marisa.smith@hhs.gov)

Korunda Medical and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

**B. Proof of Submissions.**

Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

**III. Effective Date and Term of CAP**

The Effective Date for this CAP shall be calculated in accordance with paragraph II.14 of the Agreement ("Effective Date"). The period for compliance ("Compliance Term") with the obligations assumed by Korunda Medical under this CAP shall begin on the Effective Date of this CAP and end one (1) year from the Effective Date, unless HHS has notified Korunda Medical under section VIII hereof of its determination that Korunda Medical has breached this CAP. In the event of such a notification by HHS under section VIII hereof, the Compliance Term shall not end until HHS notifies Korunda Medical that it has determined that the breach has been cured. After the Compliance Term ends, Korunda Medical shall still be obligated to: (a) submit the final Annual Report as required by section VI; and (b) comply with the document retention requirement in section VII.

**IV. Time**

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

**V. Corrective Action Obligations**

Korunda Medical agrees to the following:

**A. Review and Revise Policies and Procedures for Individual Access to PHI**

1. Within thirty (30) calendar days of the Effective Date, Korunda Medical shall review, and to the extent necessary, revise its policies and procedures related to access to protected health information (PHI) consistent with 45 C.F.R. § 164.524. The revised policies and procedures shall identify Korunda Medical's methods for calculating a reasonable cost-based fee for access to PHI, including the methods for calculating costs for: (1) labor for copying the PHI requested by the individual, whether in paper or electronic form (e.g., hourly wage for workforce member copying the requested PHI); (2) supplies for creating the paper copy or electronic media (e.g., CD or USB drive) if the individual requests that the electronic copy be provided on portable media; (3) postage,

when the individual requests that the copy, or the summary or explanation, be mailed; and (4) preparation of an explanation or summary of the PHI, if agreed to by the individual.

2. HHS shall review and, if necessary, recommend changes to the aforementioned policies and procedures for individual access to PHI. Upon receiving recommended changes from HHS, Korunda Medical shall have thirty (30) calendar days to provide revised policies and procedures for individual access to PHI for HHS's approval.

**B. Privacy Training on Individual Access to Protected Health Information**

1. Within sixty (60) calendar days of the Effective Date, Korunda Medical shall provide training materials regarding the individual's right of access to PHI consistent with 45 C.F.R. § 164.524 to HHS for review and approval.
2. Within thirty (30) calendar days of HHS's approval and annually while under the Term of this CAP, Korunda Medical shall provide training to all workforce members at its facilities on the Privacy Rule requirements concerning the individual's right of access to PHI.

**C. Access Request Status Requirements**

1. Within ninety (90) calendar days of receipt of HHS's approval of the policies and procedures required by section V.A.1, and every ninety (90) calendar days thereafter while under the Term of this CAP, Korunda Medical shall submit to HHS a list of requests for access to PHI received by Korunda Medical, including the date request received, date request completed, format requested, format provided, number of pages (if provided in paper format), and cost, excluding postage.
2. If Korunda Medical denied any request for access, in whole or in part, Korunda Medical shall submit to HHS all documentation consistent with 45 C.F.R. § 164.524(d).

**D. Reportable Events**

1. During the Compliance Term, Korunda Medical shall, upon receiving information that a workforce member may have failed to comply with its access policies and procedures, promptly investigate this matter. If Korunda Medical determines, after review and investigation, that a member of its workforce has failed to comply with these policies and procedures, Korunda Medical shall notify HHS in writing within thirty (30) calendar days. Such violations shall be known as Reportable Events. The report to HHS shall include the following information:

- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
- b. A description of the actions taken and any further steps Korunda Medical plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy Rule policies and procedures.

## **VI. Implementation Report and Annual Reports**

### **A. Implementation Report.**

1. Within one hundred twenty (120) calendar days after the receipt of HHS's approval of the policies and procedures required by section V.A.1, Korunda Medical shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:
  - a. An attestation signed by an owner or officer of Korunda Medical attesting that the policies and procedures approved by HHS in section V.A are being implemented;
  - b. An attestation signed by an owner or officer of Korunda Medical attesting that all members of the workforce have completed the initial training required by section V.B.2;
  - c. An attestation signed by an owner or officer of Korunda Medical stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

### **B. Annual Report.**

1. The one (1) year period after the Effective Date shall be known as the "Reporting Period." Within sixty (60) calendar days after the close of the Reporting Period, Korunda Medical shall submit a report to HHS regarding Korunda Medical's compliance with this CAP for the Reporting Period. This report, known as the "Annual Report," shall include:
  - a. An attestation signed by an owner or officer of Korunda Medical attesting that all members of the workforce have completed the training required by section V.B.2 during the Reporting Period;
  - b. An attestation signed by an officer or owner of Korunda Medical attesting that any revision(s) to the policies and procedures required by section V.A. were



finalized and adopted within thirty (30) calendar days of HHS's approval of the revision(s), which shall include a statement affirming that Korunda Medical distributed the revised policies and procedures to all appropriate members of Korunda Medical's workforce within sixty (60) calendar days of HHS's approval of the revision(s);

- c. A summary of Reportable Events (defined in V.D.), if any, the status of any corrective and preventative action(s) relating to all such Reportable Events, or an attestation signed by an officer or director of Korunda Medical stating that no Reportable Events occurred during the Compliance Term.
- d. An attestation signed by an owner or office of Korunda Medical attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

## **VII. Document Retention**

Korunda Medical shall maintain for inspection and copying, and shall provide to HHS, upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

## **VIII. Breach Provisions**

Korunda Medical is expected to fully and timely comply with all provisions contained in this CAP.

- A. **Timely Written Requests for Extensions.** Korunda Medical may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A "timely written request" is defined as a request in writing received by HHS at least five (5) calendar days prior to the date such an act is required or due to be performed.
- B. **Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty.** The parties agree that a breach of this CAP by Korunda Medical constitutes a breach of the Agreement. Upon a determination by HHS that Korunda Medical has breached this CAP, HHS may notify Korunda Medical of: (1) Korunda Medical's breach; and (2) HHS' intent to impose a civil money penalty (CMP), pursuant to 45 C.F.R. Part 160, or other remedies, for the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other conduct that constitutes a violation of the HIPAA Privacy, Security, and Breach Notification Rules ("Notice of Breach and Intent to Impose CMP").
- C. **Korunda Medical Response.** Korunda Medical shall have thirty (30) calendar days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS's satisfaction that:
  1. Korunda Medical is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;

2. the alleged breach has been cured; or
3. the alleged breach cannot be cured within the 30-day period, but that: (a) Korunda Medical has begun to take action to cure the breach; (b) Korunda Medical is pursuing such action with due diligence; and (c) Korunda Medical has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, Korunda Medical fails to meet the requirements of section VIII.C of this CAP to HHS's satisfaction, HHS may proceed with the imposition of the CMP against Korunda Medical pursuant to 45 C.F.R. Part 160 for any violations of the Covered Conduct set forth in paragraph 2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify Korunda Medical in writing of its determination to proceed with the imposition of the CMP.



For Korunda Medical, LLC

\_\_\_\_\_  
Zdenko Korunda, M.D.  
Medical Director

\_\_\_\_\_  
Date

12/06/2019

For the United States Department of Health and Human Services



\_\_\_\_\_  
Marisa M. Smith, Ph.D.  
Regional Manager  
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