

Business Associate Agreement

Practice Name

*** THIS DOCUMENT IS A TEMPLATE. IT DOES NOT REFLECT THE REQUIREMENTS OF STATE LAWS. YOU SHOULD CONSULT WITH ADVISORS FAMILIAR WITH YOUR STATE'S PRIVACY LAWS AND LAWS REGARDING THIRD PARTY BENEFICIARIES PRIOR TO USING THIS DOCUMENT.**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, effective _____, 201_ ("Effective Date"), is entered into by and between _____ (the "Business Associate") and _____, a {physician licensed to practice medicine in the State of _____ OR a professional corporation organized under the laws of the State of _____} (the "Covered Entity") (each a "Party" and collectively the "Parties").

WHEREAS, Covered Entity and Business Associate are required to comply with the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), as amended by the Privacy and Security provisions set forth in Section 13400 of the Health Information Technology for Economic and Clinical Health Act, Public Law 111-5 ("HITECH Act"), and the regulations promulgated thereunder codified at 45 CFR Parts 160 and 164 (commonly known as the Privacy and Security Rules) (collectively referred to herein as the "HIPAA Regulations"); and,

WHEREAS, the Covered Entity has engaged the Business Associate to perform "Services" as defined below; and,

WHEREAS, in the performance of the Services, the Business Associate must Use and/or Disclose Protected Health Information ("PHI") received from or transmitted to the Covered Entity; and,

WHEREAS, the Parties are committed to complying with the HIPAA Regulations;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties enter into this Business Associate Agreement ("Agreement").

1. Definitions

Capitalized terms used, but not otherwise defined, in this Agreement will have the meaning ascribed to them in the HIPAA Regulations or the Underlying Agreement, as the case may be. PHI will have the meaning ascribed to it in the HIPAA Regulations, but for the purposes of this Agreement will refer solely to PHI transmitted from or on behalf of Covered Entity to Business Associate or a Subcontractor of Business Associate, or created by Business Associate or its Subcontractor on behalf of Covered Entity. PHI will include PHI in an electronic form ("Electronic PHI") unless specifically stated otherwise. Subcontractor shall have the meaning ascribed to it by the HIPAA Regulations, and shall include any agent or other person who acts on behalf of an entity, provided that Business Associate is not acting as an agent of Covered Entity in its role as an independent contractor herein.

2. SERVICES

Business Associate provides {billing and collection, legal, accounting, health care business consulting, or specify other type of service} services for the Covered Entity ("Services") pursuant to an agreement to provide Services dated as of _____ ("Underlying Agreement"). In the course of providing the Services, the Use and Disclosure of PHI between the Parties may be necessary. In the event of any conflict or inconsistency between the Underlying

Agreement and this Agreement concerning the Use or Disclosure of PHI, the terms of this Agreement will prevail unless the Parties mutually agreed that the applicable terms of the Underlying Agreement would be more protective of PHI.

3. PERMITTED USES AND DISCLOSURES OF PHI BY THE BUSINESS ASSOCIATE

Unless otherwise specified herein and provided that such Uses or Disclosures are permitted under state and Federal confidentiality laws, the Business Associate may:

- a. Use or Disclose the PHI in its possession to the extent necessary to perform the Services, subject to the limits set forth in 45 CFR §164.514 regarding Limited Data Sets and 45 CFR §164.502(b) regarding the minimum necessary requirements and only to the extent that such Use or Disclosure would not violate the HIPAA Regulations if done by Covered Entity;
- b. Disclose to its employees, subcontractors and agents the minimum amount of PHI in its possession necessary to perform the Services;
- c. Use or Disclose PHI in its possession as directed in writing by the Covered Entity;
- d. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate;
- e. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, so long as the Business Associate represents, in writing, to the Covered Entity that (i) the disclosures are Required By Law, as defined in 45 CFR §164.103 or (ii) the Business Associate has received written assurances from the third party regarding its confidential handling of such PHI and such PHI is Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to such third party and such third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached, as required in Section 45 CFR §164.504(e)(4);
- f. aggregate the PHI in its possession with the PHI of other covered entities with which the Business Associate also acts in the capacity of a business associate so long as the purpose of such aggregation is to provide the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity in accordance with 45 CFR §164.504(e)(2)(i)(B). Under no circumstances may the Business Associate Disclose PHI of Covered Entity to another covered entity unless such disclosure is explicitly authorized herein;
- g. de-identify PHI so long as the de-identification complies with 45 CFR §164.514(b), including without limitation any documentation requirements. Such de-identified information is not considered PHI under the HIPAA Regulations and is not subject to the terms of this Agreement, provided such Use or Disclosure is permitted by the Underlying Agreement and applicable law;
- h. Use and/or Disclose PHI in a manner consistent with Covered Entity's minimum necessary policies and procedures.

3. RESPONSIBILITIES OF THE BUSINESS ASSOCIATE WITH RESPECT TO PHI

The Business Associate further agrees to:

- a. Use and/or Disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law as defined in 45 CFR §164.103;

- b. use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by this Agreement,
- c. Use and Disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform the Services or other activities required or permitted hereunder;
- d. in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information, including that any Subcontractor agrees to implement reasonable and appropriate safeguards to protect the PHI and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI;
- e. develop appropriate internal policies and procedures to ensure compliance with this Agreement and use other reasonable efforts to maintain the security of the PHI and to prevent unauthorized Use and/or disclosure of such PHI, including but not limited to, compliance with Subpart C of 45 CFR Part 164 with respect to Electronic PHI including by implementing Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 CFR §§ 164.308; 164.310; 164.312;
- f. to the extent the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- g. notify the Covered Entity's designated Privacy Officer, in writing, of any Use and/or Disclosure of the PHI not permitted or required hereunder, and any other security incident or Breach of Unsecured PHI of which it becomes aware, within three (3) days of the Business Associate's discovery (as defined by 45 CFR §164.404(a)) of such unauthorized Use and/or Disclosure or other security incident or Breach of Unsecured PHI;
- h. develop and implement policies and procedures for mitigating, to the greatest extent possible, any negative or unintended effects caused by the improper Use and/or Disclosure of PHI that the Business Associate reports to the Covered Entity;
- i. if PHI provided to Business Associate, or to which Business Associate has access, constitutes a Designated Record Set, Business Associate agrees to provide Covered Entity with timely access to such PHI or, at Covered Entity's request, to provide an Individual with access to his or her PHI in order to meet the requirements under 45 CFR § 164.524 concerning access of Individuals to PHI. In the event an Individual contacts Business Associate or its Subcontractor directly about gaining access to his or her PHI, Business Associate will not provide such access but rather will forward such request to Covered Entity within three (3) business days of such contact, unless otherwise required by law;
- j. make any amendments to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526;
- k. provide the Covered Entity with all information the Covered Entity requests, in writing, to respond to a request by an individual for an accounting of the disclosures of the individual's PHI as permitted in 45 CFR § 164.528 within thirty (30) days of receiving the request;

- l. upon two (2) days' written notice, allow access by the Covered Entity all records, books, agreements, policies and procedures relating to the Use and/or Disclosure of PHI at Business Associate's offices so that the Covered Entity may determine the Business Associate's compliance with the terms of this Agreement;
- m. make available all records, books, agreements, policies and procedures relating to the Use and/or Disclosure of PHI as requested by the Secretary of HHS for determining the Covered Entity's compliance with the HIPAA Regulations, subject to attorney-client and other applicable legal privileges;
- n. immediately return to the Covered Entity or destroy the PHI in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all back-up tapes); and

4. RESPONSIBILITIES OF THE COVERED ENTITY WITH RESPECT TO PHI

The Covered Entity hereby agrees:

- a. to provide the Business Associate with a copy of the Covered Entity's current Notice of Privacy Practices ("Notice") required by 45 CFR § 164.520 upon request;
- b. to advise the Business Associate of any changes in or revocation of any consent or authorization of any individual and of any other change in any arrangement affecting the Use and or disclosure of PHI to which the Covered Entity has agreed, including, but not limited to, restrictions on Use and/or disclosure of PHI pursuant to 45 CFR § 164.522;
- c. {Use only if Services involve marketing or fundraising} to inform the Business Associate of any individual who elects to opt-out of any marketing and/or fundraising activities of the Covered Entity.

5. TERM AND TERMINATION

- a. This Agreement shall become effective on the Effective Date and shall remain in effect for a period that is coterminous with the Underlying Agreement unless and (i) this Agreement is terminated sooner in accordance with this Section 6; or (ii) the Underlying Agreement is amended by written agreement of the Parties in a manner that the Parties mutually agree renders the provisions of this Agreement unnecessary.
- b. If the Covered Entity determines that the Business Associate has breached a material term of this Agreement, then at the sole discretion of the Covered Entity, it may either terminate this Agreement immediately upon written notice to the Business Associate or provide the Business Associate with written notice of the material breach and allow the Business Associate fifteen (15) days to cure such breach upon mutually agreeable terms; provided, however, that if an agreement regarding a satisfactory cure is not achieved within the fifteen (15) days, the Covered Entity may immediately terminate this Agreement upon written notice to the Business Associate.
- c. Upon termination of this Agreement for any reason, the Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of PHI.

7. INDEMNIFICATION; LIMITATION OF LIABILITY; BREACH NOTIFICATION

- a. The Business Associate hereby agrees to indemnify, defend and hold harmless the Covered Entity and its shareholders, directors, officers, partners, members, employees, agents and/or contractors (collectively "Indemnified Party") against any losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may be imposed upon the Covered Entity by reason of any suit, claim, action,

proceeding or demand by any third party which results from the Business Associate's breach of this Agreement or from any negligence or wrongful acts or omissions, including failure to comply with the terms and requirements of the Privacy or Security Regulations, by the Business Associate, its shareholders, directors, officers, partners, members, employees, agents and/or contractors. This obligation of the Business Associate to indemnify the Covered Entity shall survive the termination of this Agreement for any reason.

b. Business Associate agree that if it fails to adhere to any of the provisions set forth in this Agreement or the Underlying Agreement and, as a result, PHI or other confidential information is unlawfully accessed, Used or Disclosed, Business Associate agrees to pay all costs associated with any notification to affected individuals that is required by law, and Business Associate will also pay any and all fines and/or administrative penalties imposed for such unauthorized access, Use or Disclosure of PHI or other confidential information or for delayed reporting.

8. GENERAL PROVISIONS

- a. This Agreement may not be modified or amended except in a writing signed by both Parties.
- b. No waiver of any provision of this Agreement by either Party shall constitute a general waiver for future purposes.
- c. This Agreement may not be assigned by the Business Associate without written approval of the Covered Entity. The Covered Entity may assign this Agreement upon written notice to the Business Associate.
- d. This Agreement shall inure to the benefit of and be binding upon the Parties, their respective successors or assigns.
- e. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as though such invalid or unenforceable provision was omitted.
- f. The Provisions of this Agreement shall survive termination of this Agreement to the extent necessary to effectuate their terms or indefinitely with respect to the use and disclosure of PHI.
- g. Any notices to be given hereunder shall be given via U.S. Mail, return receipt requested, or by a recognized commercial express courier, as follows:

If to Business Associate, to:

Attention: _____

Fax: () _____

with a copy (which shall not constitute notice) to:

Attention: _____

Fax: () _____

If to Covered Entity, to

Attention: Privacy Officer

Fax: () _____

with a copy (which shall not constitute notice) to:

Attention: _____

Fax: () _____

Each Party named above may change its address and/or the name of its representative by providing notice thereof in the manner provided above. If personally delivered, such notice shall be effective upon delivery. If mailed or delivered by private carrier in accordance with this Section, such notice shall be effective as of the date indicated on the return receipt whether or not such notice is accepted by the addressee.

j. This Agreement shall be construed according to the HIPAA Regulations and the laws of the State of {insert Covered Entity's preferred state} applicable to contracts formed and wholly performed within that State. The Parties further agree that should a cause of action arise under any Federal law, the suit shall be brought in the Federal District Court where the Covered Entity is located.

k. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

This space is intentionally left blank. The signature page follows.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed effective as of the date first stated above.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____