

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) is made and entered into by and between \_\_\_\_\_ and \_\_\_\_\_ on this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 200\_\_. For mutual and valuable consideration, the parties agree as follows:

### 1. **Definitions:**

(a) Catch-all-definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule.

(b) Specific definitions:

Business Associate. "Business Associate" shall mean \_\_\_\_\_  
Name of business associate

Practice. The "Practice" shall mean \_\_\_\_\_, M.D.

Patient. "Patient" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Protected Health Information. "Protected Health information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, as limited to the information created or received by Business Associate from or on behalf of Practice.

Required By Law- "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

### 2. **Obligations and Activities of Business Associate**

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of the Agreement.
- (d) Business Associate agrees to report to Practice any use or disclosure of the Protected Health Information not provided for by this agreement of which it becomes aware.
- (e) Business associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Practice, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Practice, and in the time and manner requested by the Practice, to Protected Health Information to the Practice or, as directed by Practice, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Practice directs or agrees to pursuant to 45 CFR 164.526 at the request of Practice or a Patient, and in the time and manner requested by the Practice.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Practice available to the Practice, or to the Secretary, in a time and manner requested by the Practice or designated by the Secretary determining Practice's compliance with the Privacy Rule.
- (i) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Practice to respond to a request by a Patient for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to Practice or a Patient, in time and manner requested by the Practice, information collected in accordance with subsection 2(i) of this Agreement, to permit Practice to respond to a request by a Patient for an accounting of disclosures of Protected Health Information in accordance with 45CFR 164.528.

### **3. Permitted Uses and Disclosures by Business Associate**

- (a) **Specific purposes:** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for or on behalf of, Practice as specified in the agreement with

\_\_\_\_\_, provided that such use or disclosure would not violate the Privacy Rule if done by Practice or the minimum necessary policies and procedures of the Practice.

(b) Obligation of the Practice:

(1) Practice shall notify Business Associate of any limitation (s) in its notice of privacy practices of Practice in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(2) Practice shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(3) Practice shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Practice has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(c) Permissible Request by Practice:

Practice shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Practice.

4. Term and Termination

(a) Term: This Agreement shall be effective as of \_\_\_\_\_ and shall terminate when all the Protected Health Information provided by Practice to Business Associate, or created or received by Business Associate on behalf of Practice, is destroyed or returned to Practice, or, if it is impractical to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause: Upon Practice's knowledge of a material breach by Business Associate, Practice shall either: (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and any related agreement if Business Associate does not cure the breach or end the violation within the time specified by Practice; (2) Immediately terminate this Agreement and any related agreement entered into by the parties if Business Associate has breached a material term of this Agreement and cure is not possible; or (3) If neither termination nor cure are feasible, Practice shall report the violation to the Secretary.

(c) Effect of Termination:

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Practice, or created or received by Business Associate on behalf of Practice. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that business Associate determines that returning or destroying the Protected Health Information is impractical, Business Associate shall provide to Practice

notification of the conditions that make return or destruction impractical. Upon providing notice that return or destruction of Protected Health Information is impractical, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction impractical, for so long as Business Associate maintains such Protected Health Information.

**5. Miscellaneous**

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) Amendment: The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Practice to comply with the requirements of the HIPAA Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L.NO. 104-191.

(c) Survival: The respective rights and obligations of Business Associate under subsection 4(c) of this Agreement shall survive the termination of this Agreement.

(d) Interpretation: Any ambiguity in this Agreement shall be resolved to permit Practice to comply with the HIPAA Privacy Rule.

\_\_\_\_\_   
 The Practice

\_\_\_\_\_   
 The Business Associate

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

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

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

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