

BUSINESS ASSOCIATE AGREEMENT

THESE PROVISIONS MAY STAND ALONE AS A BUSINESS ASSOCIATE CONTRACT, OR MAY BE INCORPORATED INTO A LARGER, MORE COMPREHENSIVE CONTRACT WITH THE BUSINESS ASSOCIATE TO COVER OTHER MATTERS.

This Contract is entered into by and between _____ (“Practitioner”) and _____ (“Business Associate”) to set forth the terms and conditions under which *protected health information* (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Regulations enacted hereunder (HIPAA) and as defined in 42 CFR Pt. 2 (alcohol and chemical dependency), created or received by Business Associate on behalf of Practitioner may be used or disclosed.

This Contract shall commence on _____ and the obligations herein shall continue in effect so long as Business Associate uses, discloses, creates or otherwise possesses any PHI created or received on behalf of Practitioner and until all PHI created or received by Business Associate on behalf of Practitioner is destroyed or returned to Practitioner pursuant to Paragraph 15 herein.

1. Practitioner and Business Associate hereby agree that Business Associate shall be permitted to use and/or disclose PHI created or received on behalf of Practitioner for the following purpose(s):

[Include a general description of the purpose(s) for which the Business Associate may use and disclose PHI; e.g. for billing agencies: “completing and submitting health care claims to health plans and other third party payers.” The stated purpose(s) should reflect the reason for the arrangement with the Business Associate. The permitted uses and disclosures must be within the scope of, and necessary to achieve, the obligations and responsibilities of the Business Associate in performing on behalf of, or providing services to, Practitioner.]

2. Business Associate may use and disclose PHI created or received by Business Associate on behalf of Practitioner if necessary for the proper management and administration of Business Associate or to carry out Business Associate’s legal responsibilities, provided that any disclosure is:
 - A. Required by law; or
 - B. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that (i) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (ii) the Business Associate will be notified of any instances of which the person is aware in which the confidentiality of the information is breached.

3. Business Associate hereby agrees to maintain the security and privacy of all PHI in a manner consistent with state and federal laws and regulations, including HIPAA, 42 CFR Pt. 2 and all other applicable law.
4. Business Associate further agrees not to use or disclose PHI except as expressly permitted by this Contract, applicable law, or for the purpose of managing Business Associate's own internal business processes consistent with Paragraph 2 herein.
5. Business Associate shall not disclose PHI to any member of its workforce unless Business Associate has advised such person of Business Associate's privacy and security obligations under this Contract, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violations of this Contract and applicable law. Business Associate shall not disclose PHI created or received by Business Associate on behalf of Practitioner to a person, including any agent or subcontractor of Business Associate but not including a member of Business Associate's own workforce, until such person agrees in writing to be bound by the provisions of this Contract and applicable state or federal law.
6. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI not permitted by this Contract or applicable law.
7. Business Associate agrees to maintain a record of its disclosures of PHI, including disclosures not made for the purposes of this Contract. Such record shall include the date of the disclosure, the name and, if known, the address of the recipient of the PHI, the name of the individual who is the subject of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to an individual who is the subject of such information or Practitioner within thirty (30) days of a request and shall include disclosures made on or after the date which is six (6) years prior to the request or April 14, 2003, whichever is later.

Business Associate shall not be required to maintain a record of disclosures of PHI made

- A. for the purpose of *treatment, payment or health care operations* (as those terms are defined under HIPAA);
 - B. to an individual who is the subject of the PHI; and
 - C. pursuant to an Authorization which is valid under HIPAA.
8. Business Associate agrees to report to Practitioner any unauthorized use or disclosure of PHI by Business Associate or its workforce or subcontractors and the

remedial action taken or proposed to be taken with respect to such use or disclosure and account for such disclosure.

9. Business Associates agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from Practitioner, or created or received by Business Associate on behalf of Practitioner, available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Covered Entity's compliance with HIPAA.
10. Within ten (10) days of a written request by Practitioner, Business Associate shall allow a person who is the subject of PHI, such person's legal representative, or Practitioner to have access to and to copy such person's PHI maintained by Business Associate. Business Associate shall provide PHI in the format requested by such person, legal representative, or Practitioner unless it is not readily producible in such format, in which case it shall be produced in standard hard copy format.
11. Business Associate agrees to amend, pursuant to a request by Practitioner, PHI maintained and created or received by Business Associate on behalf of Practitioner. Business Associate further agrees to complete such amendment within ten (10) days of a written request by Practitioner, and to make such amendment as directed by Practitioner.
12. In the event Business Associate fails to perform the obligations under this Contract, Practitioner may, at its option:
 - A. Require Business Associate to submit to a plan of compliance, including monitoring by Practitioner and reporting by Business Associate, as Practitioner, in its sole discretion, determines necessary to maintain compliance with this Contract and applicable law. Such plan shall be incorporated into this Contract by amendment hereto;
 - B. Require Business Associate to mitigate any loss occasioned by the unauthorized disclosure or use of PHI; and
 - C. Immediately discontinue providing PHI to Business Associate with or without written notice to Business Associate.
13. Practitioner may immediately terminate this Contract and related contracts if Practitioner determines that the Business Associate has breached a material term of this Contract. Alternatively, Practitioner may choose to: (i) provide Business Associate with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach to the satisfaction of Practitioner within ten (10) days. The Business Associate's failure to cure shall be grounds for immediate termination of this Contract. Practitioner's remedies under this Contract are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

14. If circumstances exist that prevent immediate contract termination with the business associate, the Practitioner shall hold the business associate responsible for any damages incurred, require the business associate to mitigate damages to the Practitioner and the patient, require the business associate to adopt practice that would result in limiting similar risks in the future and report the violation as well as the business associate to the Secretary of the US Department of Health and Human Services.

15. Upon termination of this Contract, Business Associate shall return or destroy all PHI received from Practitioner, or created or received by Business Associate on behalf of Practitioner and that Business Associate maintains in any form, and shall retain no copies of such information. If the parties mutually agree that return or destruction of PHI is not feasible, Business Associate shall continue to maintain the security and privacy of such PHI in a manner consistent with the obligations of this Contract and as required by applicable law, and shall limit further use of the information to those purposes that make the return or destruction of the information infeasible. The duties hereunder to maintain the security and privacy of PHI shall survive the discontinuance of this Contract.

16. Practitioner may amend this Contract by providing ten (10) days prior written notice to Business Associate in order to maintain compliance with State or Federal law. Such amendment shall be binding upon Business Associate at the end of the ten (10) day period and shall not require the consent of Business Associate. Business Associate may elect to discontinue the Contract within the ten (10) day period, but Business Associate's duties hereunder to maintain the security and privacy of PHI shall survive such discontinuance. Practitioner and Business Associate may otherwise amend this Contract by mutual written contract.

17. Business Associate shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Practitioner and his/her respective employees, directors, and agents ("Indemnitees") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys fees, including at trial and on appeal) asserted or imposed against any Indemnitees arising out of the acts or omissions of Business Associate or any subcontractor of or consultant of Business Associate or any of Business Associate's employees, directors, or agents related to the performance or nonperformance of this Contract.

PRACTITIONER

BUSINESS ASSOCIATE

Date

Date