

FOR ILLUSTRATIVE PURPOSES ONLY
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BUSINESS ASSOCIATE AGREEMENT FOR ATTORNEY

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is effective the ___ day of _____, 200__, by and between _____ (hereinafter called "Client") and _____ (hereinafter called "Attorney").

RECITALS

Client is a healthcare provider and maintains certain confidential and protected health information and records concerning its patients.

Client is or may become a "covered entity" as that term is used and defined under the U.S. Department of Health and Human Services ("HHS") rules, 45 CFR, Parts 160 and 164 (the "Privacy Rule").

Attorney is a Business Associate as that term is used and defined under the Privacy Rule and is a provider of legal services.

Client and Attorney have entered into a representation and legal services agreement (the "Contract") in which Attorney has agreed to provide specified legal services to Client.

Client and Attorney, intend that this Agreement shall be an addendum to Contract for the purpose of ensuring that all of their business related to the Contract is conducted in compliance with all applicable federal and state laws, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and regulations implementing HIPAA, including the Privacy Rule, 45 CFR part 160 and part 164 and the Security Rule, 45 CFR Part 160, subparts A and C.

In the course of the performance of the Contract, Attorney, and its directors, officers, employees, advisors, consultants and subcontractors (its "Agents"), may be given access to Individually Identifiable Health Information ("IIHI"), created or received by Client (or Attorney may create or receive IIHI on behalf of Client) which relates to the physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, which information identifies the individual or can be used to identify the individual and which is regulated under the Privacy Rule as Protected Health Information ("PHI").

COVENANTS

In consideration for granting Attorney access to the PHI and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and Attorney hereby agree as follows:

1. General Privacy Compliance.
 - a. Attorney may use and disclose PHI solely for the purpose of performing its obligations under the Contract, but in no event shall it use or disclose PHI if such use or disclosure would violate the Privacy Rule if done by Client, including the “minimum necessary” standard set out in Section 164.502(b) and Section 164.514(d) of the Privacy Rule. In this regard, Attorney will make reasonable efforts to limit disclosure of PHI to the minimum necessary to accomplish the purposes of the Contract.

The minimum necessary PHI to accomplish the purposes of the Contract has been determined to include:

All records related to the examination, diagnosis, care, treatment general protocols and procedures and charges for services rendered to those patients related to the subject of the Contract.
 - b. Under the Privacy Rule, Client must have and comply with a “Notice of Privacy Practices” (“NPP”) and provide it to its patients. Attorney shall not use PHI in any manner, which would cause Client to violate its NPP.

The Client’s NPP is attached to the Agreement as **Exhibit 1**. If Client amends or modifies its NPP during the term of the Contract, it shall give Attorney a copy of the revised NPP before its effective date.
 - c. Attorney shall maintain and safeguard the privacy, security, and confidentiality of all PHI transmitted or received from Client in connection with the Contract, in accordance with the provisions of the Privacy Rule as amended, and in accordance with all applicable federal, state and local laws, regulations and policies regarding the confidentiality of patient health information.
2. Privacy and Security Obligations. This Agreement establishes permitted and required uses and disclosures of PHI by the Attorney. As required by the Privacy Rule, the Attorney shall:
 - a. Not use or further disclose PHI other than as permitted or required by this Agreement, or as “Required by Law” (as that term is defined in the Privacy Rule);
 - b. Use appropriate safeguards to prevent the use or disclosure of PHI, other than as authorized under this Agreement;

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- c. As directed by Client, take all reasonable measures to mitigate any harmful effect of a use or disclosure of PHI that is in violation of the requirements of this Agreement;
- d. Report to Client any use or disclosure of PHI not provided for by this Agreement;
- e. Ensure that any agents and subcontractors, to whom Attorney provides PHI received from, or created or received by the Attorney on behalf of Client agrees to the same restrictions and conditions that apply to Attorney with respect to such PHI;
- f. Make available PHI for inspection and copying to the extent required by Section 164.524 of the Privacy Rule.

The Client shall be responsible for authorizing and providing PHI in response to such requests.

Attorney shall be reimbursed for its work in this regard in accordance with its usual and customary rates, or as otherwise provided for under the Contract.

The parties acknowledge that the Privacy Rule, Section 164.524(a)(1)(ii) does not grant patient access to the extent of PHI records that include annotations, supplemental notes or medical analysis created in anticipation of litigation and prepared by the Client, its attorney or medical consultants.

- g. Make available PHI for amendment and incorporate any amendments to PHI in accordance with Section 164.526 of the Privacy Rule, which provides that an individual may request that Client correct an error in the patient's PHI.

The Client shall be responsible for authorizing amendments of PHI in response to such requests.

Attorney shall be reimbursed for its work in this regard in accordance with its usual and customary rates, or as otherwise provided for under the Contract.

If the Client authorizes an amendment to PHI, in accordance with Section 164.526(c)(3), Client shall give its Attorney the amendment if Attorney could rely on the PHI to which the amendment relates to the detriment of the patient. If the Client denies the amendment, the patient may submit a statement of disagreement or demand that the request for amendment and the denial be made part of the patient's PHI. The Client shall give Attorney any of such documents that relate to Contract and Attorney will incorporate them into its records.

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- h. Make available, as expeditiously as possible, the information required to provide an accounting of disclosures in accordance with Section 164.528 of the Privacy Rule.

The Client shall be responsible for authorizing any accounting of disclosures of PHI in response to such requests.

Attorney shall be reimbursed for its work in this regard in accordance with its usual and customary rates, or as otherwise provided for under the Contract.

Attorney, in accordance with Section 164.528(b)(1) of the Privacy Rule, shall keep records of all disclosures for which the Client must account to its patient under this section of the Privacy Rule.

- i. Make available, as expeditiously as possible, Attorney's internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Attorney on behalf of Client to Client and to the Secretary of HHS for purposes of determining Client's compliance with the Privacy Rule.

Notwithstanding the foregoing, Attorney may assert any privilege authorized by law.

- j. At termination of the Contract, if feasible, return or destroy all PHI received from, or created or received by the Attorney on behalf of, Client that the Attorney still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protection of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

The parties expressly agree that it is not feasible for Attorney to return or destroy all originals and copies of PHI and that Attorney is required to retain copies of PHI for quality control, risk management and malpractice insurance requirements. Accordingly, Attorney may retain and use a copy of PHI for these purposes only.

3. Other Permitted Uses.

- a. Attorney may store, analyze, access and use components of Protected Health Information that have been "de-identified" and that do not contain individually identifiable health information, provided that any such use is consistent with applicable law.
- b. Attorney may use and disclose PHI, as Required by Law and for the proper management and administration of its business including disclosure to its Agents, providing it obtains from any such Agents reasonable assurances that the PHI will remain confidential and be used or further disclosed only for the purpose it was disclosed and the Agent

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notifies the Attorney of any instances in which confidentiality of the PHI was breached.

4. Electronic Protected Health Information. As required by the Security Rule, and as the following capitalized terms are defined in the Security Rule, the Attorney shall:
 - a. Implement Administrative, Physical and Technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the Electronic Protected Health Information (“E PHI”) that it creates, receives, maintains or transmits on behalf of Client.
 - b. Ensure that any agent, including a subcontractor, to whom it provides E PHI agrees to implement reasonable and appropriate safeguards to protect it.
 - c. Report to Client any Security Incident of which it becomes aware.
5. Indemnification. Except as may be provided for in the Contract or by operation of law, neither party shall owe indemnification to the other.
6. Limitation of Liability. Except as may be provided for in the Contract, by operation of law, or attached in a separately executed addendum, neither party by this Agreement has negotiated any limitation on liability.
6. Insurance. Except as may be provided for in the Contract or attached in a separately executed addendum, neither party agrees to procure and maintain any policy of insurance expressly applicable to this Agreement.
7. Breach of Agreement; Termination.
 - a. In the event that Client becomes aware of a pattern or practice of the Attorney that constitutes a material breach or violation of the Attorney’s obligations under this Agreement, Client will notify the Attorney of such breach. Attorney shall as expeditiously as possible cure the breach. If Attorney fails to expeditiously cure the breach Client, if feasible, may terminate the Contract. If Attorney does not cure the breach and termination is not feasible, Client shall report the breach to HHS.

The Parties agree that due to the nature of the services provided to Client in the Contract, termination pursuant to the terms of this Agreement will not be feasible, nevertheless Client has the right to terminate the Contract at any time, pursuant to the terms of the Contract.

- b. In the event of a default or breach by the Attorney as set forth in Section 7(a) of this Agreement, Client shall have available to it any legal or equitable right or remedy to which Client is entitled, including but not limited to, injunctive relief. If the Contract is terminated Attorney shall return or destroy all PHI as specified in Section 2 j above.

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8. Obligations of Client. To the extent it may affect the Attorney's use or disclosure of PHI, Client shall notify Attorney of:
 - a. Any limitations in its NPP.
 - b. Any changes or revocation of permission by a patient to use or disclose that patient's PHI
 - c. Any restriction to the use or disclosure of PHI that Client has agreed to in accordance with Section 164.522 of the Privacy Rule.

9. Re-Negotiation. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments and changes in applicable federal and state laws, including regulations promulgated pursuant to HIPAA.

10. General Provisions.
 - a. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties, and any successor to the operations and business of the parties whether by operation of law or otherwise, including the parties heirs, legal representatives, successors, and permitted assigns. The preceding sentence shall not affect any restriction on assignment set forth elsewhere in this Agreement
 - b. Assignment. This Agreement shall not be assignable by either party without the other's prior written consent.
 - c. Arbitration. Any dispute or claim between the parties arising out of this Agreement shall be submitted to and resolved by arbitration before the American Arbitration Association or the American Health Lawyers Association. The arbitration shall be conducted by a single arbitrator. The venue for the arbitration shall be as set forth below. Notwithstanding the foregoing either party may seek injunctive relief to the extent necessary for it to comply with any governmental order, to meet an obligation Required by Law, or to obtain copies of any documents or PHI, which is the subject of this Agreement. Both parties waive their right, if any, to a jury trial.
 - d. Notices. All notices given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, postage pre-paid, addressed to the party for whom it is intended at its or his address as first set forth below. Any address for the giving of notice may be changed by giving notice to that effect to the other party. Each such notice shall be deemed to have been given on the date of its receipt by the party for whom it was intended.

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Notice to Client shall be addressed as follows:

Notice to the Attorney shall be addressed as follows:

- e. Severability. If any provision of this Agreement is or becomes unenforceable, the remainder of this Agreement shall nevertheless remain binding to the fullest extent possible, taking into consideration the purposes and spirit of this Agreement.
- f. Entire Agreement. This Agreement contains the entire understanding of the parties hereto with regard to the subject matter hereof, and supersedes all other agreements and understandings, written and oral, relating to the subject matter hereof. This Agreement may not be amended or modified, nor may any of its provisions be waived, except by a writing executed by both of the parties hereto or, in the case of a waiver, by the party waiving compliance.
- g. Waiver. The waiver of any one breach of the Agreement shall not be construed as a waiver of any rights or remedies with respect to any other breach or subsequent breach.
- h. Survival. Any provision of this Agreement, which by its terms is intended to survive the termination or expiration of this Agreement shall so survive.
- i. Jurisdiction and Venue. This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State where Attorney is legally incorporated. Venue regarding any action arising under this Agreement shall be in the county where Attorney has its principal place of business. The parties submit to the jurisdiction of the courts of the aforesaid state for resolution of all disputes related to this Agreement, including the enforcement of any award or judgment arising out of arbitration provided under this agreement.
- j. Captions. The Captions in this Agreement are inserted only as a convenient reference and are not intended to be substantive or to be considered in the construction or interpretation of any provision in this Agreement.

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- k. Cooperation. The parties shall cooperate in good faith to accomplish the objectives of this Agreement, including the execution and provision of such other and further documents and information as may be reasonably required for the fulfillment of the purposes of this Agreement. This provision is not intended to alter or enlarge any obligations under this Agreement and any charge claimed with respect to the foregoing, unless provided for in this Agreement, shall be fair and reasonable.
- l. No Third Party Rights. This Agreement is intended only to regulate the relations among the parties and does not create or grant any other person any rights or benefits.
- m. Counterparts. This Agreement may be executed in one or more counterpart copies, each of which shall be deemed an original and together shall constitute one and the same Agreement.
- n. Amendment. References to the Privacy Rule mean the Privacy Rule as it is now in effect or as it may be hereafter amended. The parties agree to amend this Agreement from time to time as may be necessary for Client to comply with the Privacy Rule.
- o. Interpretation. Any ambiguity in this Agreement shall be interpreted and resolved to permit Client to comply with the Privacy Rule.
- p. Capitalized word or phrase. Unless otherwise defined in this Agreement or the context otherwise requires, a capitalized word or phrase shall have the meaning given to that word or phrase by the Privacy Rule.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

_____, **CLIENT**

By: _____

Title: _____

Date: _____

_____, **ATTORNEY**

By: _____, for the Firm

Date: _____