

# BUSINESS ASSOCIATE AGREEMENT 2018 – Clinic Pro Support

THIS BUSINESS ASSOCIATE AGREEMENT (“BAA”) is made and entered into on this January 1, 2016 by and between \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, and **Clinic Pro Support having its principal place of business at 80 Juniper Drive Sedona, AZ 86336.**

**WHEREAS**, the PRACTICE maintains certain confidential Protected Health Information (“PHI”) concerning its Patients, and such information includes information created, or received by the PRACTICE or created, received, maintained, or transmitted by the BUSINESS ASSOCIATE; and

**WHEREAS**, the BUSINESS ASSOCIATE and the PRACTICE have entered into an agreement under which the BUSINESS ASSOCIATE provides services to the PRACTICE and, in the course of providing those services, the BUSINESS ASSOCIATE may or will have access to PHI; and

**WHEREAS**, the parties are obligated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and to enter into a written agreement under which the BUSINESS ASSOCIATE will agree to appropriately safeguard PHI.

**NOW, THEREFORE**, the parties agree as follows:

## Definition of Terms

Terms not defined in this BAA are defined in the HIPAA Privacy, Security and HITECH Rules and shall have the same meaning when used in this BAA as they have in the HIPAA Privacy, Security and HITECH Rules.

**HIPAA Rules:** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

## 1) Use and Disclosure of PHI

- a) BUSINESS ASSOCIATE will hold and keep the PHI strictly confidential and use and/or disclose PHI only as required or permitted under the terms of the Contract and this Agreement.
- b) The BUSINESS ASSOCIATE may use and/or disclose the PHI for the proper management and administration of the BUSINESS ASSOCIATE, or to carry out the legal responsibilities of the BUSINESS ASSOCIATE. However, such use and/or disclosure must be either required by law or, prior to making use of the PHI or disclosing the PHI, the BUSINESS ASSOCIATE must obtain reasonable assurance from the person to whom the PHI will be disclosed that the PHI: (i) will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed; and (ii) the person to whom it is disclosed agrees to notify the BUSINESS ASSOCIATE of any instance of which the person is aware in which the confidentiality of the PHI has been breached.
- c) The BUSINESS ASSOCIATE may use the PHI to provide data aggregation services to the PRACTICE. Data aggregation means, with respect to PHI, the combining of the PHI by the BUSINESS ASSOCIATE with protected health information received by the BUSINESS ASSOCIATE in its capacity as a BUSINESS ASSOCIATE of another health care provider to permit data analysis that relates to the health care operations (excluding genetic information) of the PRACTICE and the other health care provider.
- d) To the extent the BUSINESS ASSOCIATE is to carry out one or more of Practices obligation(s) under HIPAA Rules; comply with the requirements of Subpart E that apply to the PRACTICE in the performance of such obligation(s).

e) BUSINESS ASSOCIATE obligations and permitted uses of PHI are as follows:

- Processing insurance claims
- Scheduling appointments, electronic billing
- Patient health information
- EHR information

f) BUSINESS ASSOCIATE will ensure that any agents, including subcontractors, to whom it provides in writing to the same restrictions and conditions including but not limited to those relating to termination of the contract for disclosure, that apply to BUSINESS ASSOCIATE with respect to such information. BUSINESS ASSOCIATE shall terminate any agreement with an agent or subcontractor, if any, who fails to abide by such restrictions and obligations.

## 2) Safeguards to Protect PHI

- a) BUSINESS ASSOCIATE agrees to implement and use appropriate safeguards, including protection of electronic data through administrative, physical and technical safeguards, to prevent use or disclosure of PHI other than as provided for by this BAA. "Appropriate safeguards" include, but are not limited to, physical, administrative and technical safeguards such as locking cabinets or rooms where PHI is housed, using computer passwords and other security measures to prevent unauthorized access to PHI in electronic format; implementing policies and procedures describing authorized access and use for BUSINESS ASSOCIATES workforce; and human resources policies and procedures to enforce these rules.
- b) BUSINESS ASSOCIATE will ensure that any of its agents, including, but not limited to any subcontractors that create, receive, maintain, or transmit PHI on behalf of the BUSINESS ASSOCIATE, will agree to the same restrictions and conditions that apply to the BUSINESS ASSOCIATE under the terms of this Agreement.
- c) BUSINESS ASSOCIATE will Report to PRACTICE any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required by HIPAA Rules, and any security incident of which it becomes aware;

## 3) Reporting to the PRACTICE

- a) **Improper Use or Disclosure:** the BUSINESS ASSOCIATE will report to the PRACTICE any use or disclosure of the PHI that is not permitted under the terms of this Agreement, provided that the BUSINESS ASSOCIATE becomes aware of such improper use or disclosure, including any security incidents.
- b) **Breach of Unsecured PHI:** the BUSINESS ASSOCIATE will **immediately** report to the PRACTICE any breach of unsecured PHI in accordance with HITECH Section 13402(b).  
THE BUSINESS ASSOCIATE TO HANDLE THE BREACH NOTIFICATIONS TO INDIVIDUALS, THE HHS OFFICE FOR CIVIL RIGHTS (OCR), AND POTENTIALLY THE MEDIA, ON BEHALF OF THE PRACTICE IN ACCORDANCE WITH HITECH AND OMNIBUS FINAL RULE BREACH NOTIFICATION PROVISIONS.

## 4) Mitigation

- a) The BUSINESS ASSOCIATE will mitigate, to the extent practicable, any harmful effect that is known to the BUSINESS ASSOCIATE of a use, disclosure, or breach of PHI by the BUSINESS ASSOCIATE in violation of the terms of this Agreement, including, but not limited to, compliance with applicable state law or contractual breach requirements.

5) Access to Information

- a) Within 5 days of a request by the PRACTICE and in a manner designated by the PRACTICE:
  - i) The BUSINESS ASSOCIATE will make its internal books and records relating to the use and disclosure of PHI available to the PRACTICE and to the Secretary of Health and Human Services, for the purpose of the Secretary determining whether the PRACTICE has complied with the HIPAA Rules.
  - ii) The BUSINESS ASSOCIATE will provide access to PHI in its possession to the PRACTICE or, as directed by the PRACTICE, to a Patient, in order to meet the PRACTICE'S obligations to provide access to the PHI to the Patient.
  - iii) The BUSINESS ASSOCIATE will provide access to PHI in its possession to the PRACTICE so that the PRACTICE can amend the PHI as required under HIPAA Rules. The BUSINESS ASSOCIATE will also make any amendment to the PHI that is requested by the PRACTICE as a result of the Patient having requested such an amendment.
  - iv) The BUSINESS ASSOCIATE will maintain and make available the information required to provide an accounting of disclosures of PHI in its possession to the PRACTICE or, as directed by the PRACTICE, in order for the PRACTICE to provide an accounting of disclosures which it is required to do under the HIPAA Rules.

6) Term and Termination

- a) Term. The Term of this Agreement shall be effective as of January 5, 2016, and shall terminate on cancellation of our contract with BUSINESS ASSOCIATE or on the date the PRACTICE terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b) Termination for Cause. BUSINESS ASSOCIATE authorizes termination of this Agreement by PRACTICE, if PRACTICE determines BUSINESS ASSOCIATE has violated a material term of the Agreement and BUSINESS ASSOCIATE has not cured the breach or ended the violation within the time specified by PRACTICE.
- c) Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from PRACTICE, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of PRACTICE, shall:
  - i) Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;
  - ii) Return to PRACTICE or, if agreed to by PRACTICE, destroy the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form;
  - iii) Continue to use appropriate safeguards and comply with HIPAA Rules with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;
  - iv) Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out in section 1 which applied prior to termination; and
  - v) Return to PRACTICE or, if agreed to by PRACTICE, destroy the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
- d) Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

7) Miscellaneous

- a) The following provisions shall apply to this Agreement:
- i) BUSINESS ASSOCIATE shall indemnify PRACTICE for any losses, costs or expenses that PRACTICE sustains, including, but not limited to, mitigation expenses or fines under HIPAA, as a result of any breach by BUSINESS ASSOCIATE of any of its obligations under this BAA.
  - ii) BUSINESS ASSOCIATE shall maintain during the term of this BAA a policy of errors and omissions or other comparable insurance with an insurer acceptable to PRACTICE in the amount of **\$30.00**, covering BUSINESS ASSOCIATES obligations under this BAA. The policy of insurance shall name PRACTICE as an additional insured. BUSINESS ASSOCIATE shall furnish to PRACTICE such evidence of this insurance as PRACTICE deems satisfactory upon the commencement of this BAA. BUSINESS ASSOCIATE shall notify PRACTICE of any threatened or actual cancellation or termination of the insurance coverage, at least ten days prior to any such action.
  - iii) BUSINESS ASSOCIATE agrees that the terms and conditions of this BAA shall be construed as a general confidentiality agreement that is binding upon BUSINESS ASSOCIATE even if it is determined that BUSINESS ASSOCIATE is not a BUSINESS ASSOCIATE as that term is used in the Privacy and Security Rules.
  - iv) PRACTICE and BUSINESS ASSOCIATE shall not be deemed to be partners, joint ventures, agents or employees of each other solely by virtue of the terms and conditions of this BAA.
  - v) This BAA shall not be modified or amended except by a written document that is signed by both parties. PRACTICE and BUSINESS ASSOCIATE agree to modify or amend this BAA if the Privacy and Security Rules changes in a manner that affects the terms and conditions of this BAA, or the obligations of covered entities and/or BUSINESS ASSOCIATES.
  - vi) No waiver of any provision of this Agreement, including this paragraph, shall be effective unless the waiver is in writing and signed by the party making the waiver.
  - vii) This BAA is entered into solely for the benefit of the parties, and is not entered into for the benefit of any third party, including without limitation, any patients of PRACTICE or their legal representatives.
  - viii) This BAA is not assignable or delegable without the express advance written consent of the party not seeking to assign or delegate.
  - ix) If any provision of this BAA is determined by a court of competent jurisdiction to be invalid or unenforceable, this BAA shall be construed as though such invalid or unenforceable provision were omitted, provided that the remainder of this BAA continues to satisfy all of the Privacy and Security Rules' requirements for a BUSINESS ASSOCIATE agreement. If it does not, then the parties shall immediately renegotiate this BAA so that it does comply with the requirements of the Privacy and Security Rules, or terminate this BAA and the service relationship between the BUSINESS ASSOCIATE and PRACTICE.
  - x) This BAA contains the entire agreement between the parties pertaining to this subject matter, and supersedes all prior understandings, whether written or oral, regarding the same subject matter.
  - xi) The provisions of this BAA dealing with indemnification, insurance, and the construction of this BAA as a general confidentiality agreement shall survive the termination of this BAA for any reason.
  - xii) PRACTICE may amend this agreement, as appropriate, to conform to any new or revised legislation, rules, and regulations including, without limitation, HIPAA, HITECH or changes to Privacy, Security or Transaction Standards.
  - xiii) 160.402(c)(1)COVERED ENTITIES: A covered entity is liable for a violation based on the act or omission of an agent of the covered entity, including a workforce member or business associate, acting within the scope of the agency.
  - xiv) 160.402(c)(2)A business associate is liable for a violation based on the act or omission of any agent of the business associate, including a workforce member or subcontractor, acting within the scope of the agency.

8) Notices

- a) Any communications between PRACTICE and BUSINESS ASSOCIATE regarding this BAA shall be in writing, whether or not oral communications have also occurred. Such communications shall be sent or shall be delivered personally, to the following individuals at the following addresses:

|       |                    |
|-------|--------------------|
| _____ | Clinic Pro Support |
| _____ | 80 Juniper Drive   |
| _____ | Sedona, AZ 86336   |

- b) Written communications may be sent by certified or registered U.S. Mail, receipted courier service, receipted hand delivery, receipted fax, or by receipted email.

9) Construction

- a) All understandings and agreements previously made by and between the parties are merged in this Agreement, which alone fully and completely expresses their agreement. This Agreement may not be changed, terminated, nor any of its provisions modified or waived, except in writing signed by all of the parties to this Agreement.

10) Applicable Law

- a) This Agreement will be governed by and construed in accordance with the laws of the State of Michigan without regard to its principles of conflicts of law.
- b) PRACTICE may amend this agreement, as appropriate, to conform to any new or revised legislation, rules, and regulations, including, without limitation, HIPAA, HITECH or changes to Privacy Security or Transaction Standards.

11) Binding Effect

- a) This Agreement shall be binding upon and will inure to the benefit of the parties, their heirs, distributes legal representatives, transferees, successors and assigns.

**IN WITNESS WHEREOF**, the parties have executed this BUSINESS ASSOCIATE Agreement.

\_\_\_\_\_  
Signature of PRACTICE Authorized Representative

\_\_\_\_\_  
Date

*Marilyn K Gard, MBA, CEO*

Signature of BUSINESS ASSOCIATE Representative

01-01-2018

Date