



Charles and Geneva Scott Scottish Rite
Communication Disorders Clinic
ASU Box 32041
Boone, NC 28608-2085
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Business Associates Agreement

This Agreement is made effective the _____ of _____, 201____, by and between Appalachian State University Communication Disorders Clinic, hereinafter referred to as "Covered Entity," and _____, hereinafter referred to as "Business Associate," (individually a "Party" and collectively, the "Parties").

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality, and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rules"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rules (the agreement evidencing such arrangement is reflected in a written agreement or purchase order dated _____, and hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Security and Privacy Rules, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rules and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Security and Privacy Rules. The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical, and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual.

II. COORDINATION WITH HIPAA SECURITY AND PRIVACY RULES

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rules, as amended, the HIPAA Security and Privacy Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rules, but are nonetheless permitted by the HIPAA Security and Privacy Rules, the provisions of this Agreement shall control.

The parties agree that, in the event that any documentation of this arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information, which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate’s use and disclosure of Protected Health Information.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATES

- (a) Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.
- (b) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

- (c) 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.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is know to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (e) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (f) 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 Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (g) Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rules.
- (h) Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rules.
- (i) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary of Health and Human Services.
- (j) Business Associate agrees to document any disclosures of and make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rules.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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, Covered Entity as specified in the Arrangement Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

V. TERM AND TERMINATION

- (a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. 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.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall have the right to immediately terminate this Agreement and the Arrangement Agreement.
- (c) Effect of Termination. Except as provided in paragraph (ii) of this subsection, upon termination of this Agreement, the Arrangement Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. 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.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notifications of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections 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 infeasible, for so long as Business Associate maintains such Protected Health Information.

VI. MISCELLANEOUS

- (a) No Rights in Third Parties. Except as expressly stated herein or the HIPAA Security and Privacy Rules, the Parties to this Agreement do not intend to create any rights in any third parties.
- (b) Survival. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement, and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

- (c) Amendment. This agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that this Agreement will be automatically amended to conform to any changes in the Privacy Rule as is necessary for a Covered Entity to comply with the current requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (d) Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- (e) Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.
- (f) Governing Law. This Agreement will be governed by the laws of the State of North Carolina.
- (g) No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- (h) Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (i) Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- (j) Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- (k) Controlling Provisions. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rules, as amended, the HIPAA Security and Privacy Rules shall control. Where provisions of this Agreement are different than those contained in the HIPAA Security and Privacy Rules, but are nonetheless permitted by the HIPAA Security and Privacy Rules, the provisions of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____