

HIPAA BUSINESS ASSOCIATE AGREEMENT

RECITALS

- A. This Business Associate Agreement (“Agreement”) is made and entered into as of _____ (“Effective Date”) by and between _____ (“Law Firm”), whose address is _____, and * _____ (“Resident”), whose address is * _____.
- B. WHEREAS, the U.S. Department of Health and Human Services (“HHS”), pursuant to its authority under the Health Insurance Portability and Accountability Act of 1996, P. L. 104-191, (“HIPAA”) has issued regulations on Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and E, (“Privacy Rule”);
- C. WHEREAS, Resident may qualify as a “Covered Entity” as that term is defined in the Privacy Rule;
- D. WHEREAS, Law Firm, as recipient of Protected Health Information (“PHI”) from, and on behalf of, Resident, is a “Business Associate” of Resident as that term is defined in the Privacy Rule;
- E. WHEREAS, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the business associate contract requirements at 45 C.F.R. Sections 164.502(e), 164.504(e), and as may be amended, should Resident qualify as a “Covered Entity” as that term is defined by the Privacy Rule.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms have the same meanings as set forth in the Privacy Rule.
2. Inconsistency. In the event the provisions of this Agreement are different from those mandated by the Privacy Rule, but nonetheless permitted by the Privacy Rule, the provisions of this Agreement shall govern.
3. Scope of Use and Disclosure by Law Firm of Protected Health Information.
 - 3.1 Law Firm shall be permitted to make Use and Disclosure of PHI disclosed to Law Firm by Resident, and created or received by Law Firm on behalf of Resident, as necessary to perform Law Firm’s obligations under this Agreement and Law Firm’s established policies, procedures, and requirements; provided such Use and Disclosure is consistent with the Privacy Rule.

- 3.2 Law Firm shall be permitted to make Use and Disclosure of PHI for which Consent, and Authorization, or Opportunity to Agree or Object is not required, pursuant to 45 C.F.R. Section 164.512.
- 3.3 Except as otherwise limited in this Agreement, in addition to any other Uses and Disclosures permitted or authorized by this Agreement or as Required by Law, Law Firm may:
 - a. use PHI in its possession for proper management and administration and to fulfill any legal responsibilities of Law Firm;
 - b. disclose PHI in its possession to third parties for the purpose of Law Firm's proper management and administration, including, but not limited to, facilitation of legal services, or to fulfill any legal responsibilities of Law Firm, provided the disclosures are Required by Law or Law Firm has received from the third parties written assurances that (i) the information will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the third parties; and (ii) the third parties will notify Law Firm of any instance it becomes aware in which the confidentiality of the information has been breached;
 - c. engage in Data Aggregation activities, consistent with the Privacy Rule; and
 - d. de-identify any PHI created or received by Law Firm under this Agreement; provided the de-identification conforms to the requirements of the Privacy Rule.
4. Obligations of Law Firm. In connection with its Use and Disclosure of PHI, Law Firm agrees that it will:
 - 4.1 Use or further Disclose PHI only as permitted or required by this Agreement, or as Required by Law;
 - 4.2 Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided by this Agreement;
 - 4.3 Except as protected by state or federal privilege, promptly report to Resident any Use or Disclosure of PHI not provided for by this Agreement of which Law Firm becomes aware;

- 4.4 Require contractors or agents to whom Law Firm provides PHI to agree to the same restrictions and conditions that apply to Law Firm pursuant to this Agreement;
 - 4.5 Except as protected by state or federal privilege, make available to the Secretary of HHS Law Firm's internal practices, books, and records relating to the Use or Disclosure of PHI for purposes of determining Resident's compliance with the Privacy Rule;
 - 4.6 Within a reasonable time of receiving a request from a Covered Entity with which Resident has worked as a resident ("Covered Entity"), make available to the Covered Entity, the information necessary, in a Designated Record Set, for the Covered Entity to make an Accounting of Disclosures of PHI about an Individual;
 - 4.7 Within a reasonable time of receiving a written request from a Covered Entity make available to the Covered Entity, PHI necessary, in a Designated Record Set, for the Covered Entity to respond to an Individual's Request for Access to PHI;
 - 4.8 Within a reasonable time of receiving a written request from a Covered Entity, make available to the Covered Entity the PHI necessary, in a Designated Record Set, for the Covered Entity to comply with an Individual's Request for Amendment, and incorporate any amendments or corrections to the PHI in a Designated Record Set in accordance with the Privacy Rule.
5. Obligation of Resident. Resident agrees that it shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of PHI transmitted to Law Firm pursuant to this Agreement, until such PHI is received by Law Firm;
 6. Termination.
 - 6.1 Termination for Cause. Upon Resident's knowledge of a material breach of this Agreement by Law Firm, Resident:
 - a. shall provide an opportunity for Law Firm to cure the breach; and
 - b. may terminate this Agreement if Law Firm does not cure the breach within a reasonable time, or if cure is not possible;
 - 6.2 Automatic Termination. This Agreement will automatically terminate upon cessation of Law Firm's providing legal services involving a disclosure, or disclosures, provided by Resident to Law Firm.

6.3 Effect of Termination.

- a. Termination of this Agreement will result in cessation of Resident disclosing PHI to Law Firm;
- b. Upon termination of this Agreement, Law Firm shall return or destroy all PHI received from Resident, or created or received on behalf of Resident, that Law Firm still maintains, provided that if such return or destruction is not feasible, Law Firm may maintain possession of the PHI, and will extend the protections of this Agreement to the PHI and limit further Use and Disclosure to those purposes that make the return or destruction of the PHI not feasible.

7. Amendment.

7.1 Law Firm and Resident agree to take such action as is necessary to amend this Agreement for Resident and Law Firm to comply with the requirements of the Privacy Rule and other applicable law.

7.2 Without prior written consent of both Law Firm and Resident, the provisions of this Agreement may not be amended, waived, supplemented, restated, discharged, changed, or modified.

8. Survival. The obligations of Law Firm and Resident shall survive termination of this Agreement.

9. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Law Firm and Resident and their respective successors, heirs, devisees, personal representatives, or assigns, any rights, obligations, or liabilities whatsoever.

10. Other Applicable Law. This Agreement does not, and is not intended to, abrogate any responsibilities of Law Firm or Resident under any other applicable law.

11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original hereof, but all of which together shall constitute but one and the same agreement.

12. Headings. The section headings in this Agreement have been inserted for convenience of reference only and shall in no manner affect the meaning or interpretation of the various provisions hereof.

13. Severability. If any provision of this Agreement shall be held invalid under any applicable laws, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision, and, to that end, the provisions of this Agreement are severable.

IN WITNESS WHEREOF, Law Firm and Resident hereto have duly executed this Agreement as of the Agreement Effective Date.

Law Firm

*_____
Resident

By: _____

Print Name: * _____

Print Name: _____

Date: * _____

Title: _____

Date: _____