



AMERICAN ASSOCIATION FOR ACCREDITATION OF AMBULATORY SURGERY FACILITIES, INC.

Medicare ASC ■ Medicare RHC ■ Medicare RA/OPT ■ ASF Surgical ■ ASF Oral Maxillofacial ■ ASF Procedural
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HIPAA BUSINESS ASSOCIATE AGREEMENT

This Agreement, dated as of _____, 2018 ("Agreement"), by and between _____, on its own behalf and on behalf of all entities controlling, under common control with or controlled by it (the "Covered Entity"), and American Association for Accreditation of Ambulatory Surgery Facilities Inc., an Illinois non-profit corporation, ("Business Associate"). Covered Entity and Business Associate may be referred to herein collectively as the "Parties" or individually as "Party".

WHEREAS, Covered Entity and Business Associate are parties to an agreement or various agreements pursuant to which Business Associate provides certain services to Covered Entity ("Services Agreement or Agreements"). In connection with Business Associate's services, Business Associate creates, receives, maintains or transmits Protected Health Information from, to, or on behalf of Covered Entity, which information is subject to protection under Illinois state law ("State Law") and the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the "HIPAA Statute"), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"), and related regulations promulgated by the Secretary ("HIPAA Regulations").

WHEREAS, Business Associate qualifies as a "business associate" (as defined by the HIPAA Regulations) of its clients, which means that Business Associate has certain responsibilities with respect to the Protected Health Information of its clients; and

WHEREAS, in light of the foregoing and the requirements of the HIPAA Statute, the HITECH Act and HIPAA Regulations, Business Associate and Covered Entity agree to be bound by the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

a. General. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms by the HIPAA Statute, the HITECH Act and HIPAA Regulations as in effect or as amended from time to time.

b. Specific.

i. Breach. "Breach" shall have the same meaning as the term "breach" in 45 CFR § 164.402.

ii. Electronic Health Record. "Electronic Health Record" shall have the same meaning as the term "electronic health record" in the HITECH Act, Section 13400(5).

iii. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity.

iv. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

v. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.

vi. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

vii. Required By Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

viii. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

ix. Security Rule. "Security Rule" shall mean the Security Standards at 45 CFR Part 160 and Part 164.

x. Services Agreement. "Services Agreement" shall mean any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of Protected Health Information. The Services Agreement is amended by and incorporates the terms of this Agreement.

xi. Subcontractor. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR § 160.103.

xii. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402.

xiii. HIPAA. "HIPAA" collectively refers to the HIPAA Statute, the HITECH Act, and the HIPAA Regulations, as such may be amended from time to time.

xiv. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164.

xv. Security Rule. "Security Rule" shall mean the Security Standards at 45 CFR part 160 and part 164.

xvi. Service Agreement. For purposes of this Agreement, "Service Agreement" shall refer to any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or

disclosure of Protected Health Information. Each such Service Agreement is amended by and incorporates the terms of this Agreement.

2. Obligations and Activities of Business Associate.

a. Use and Disclosure. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Service Agreement or as Required By Law. Business Associate shall comply with the provisions of this Agreement relating to privacy and security of Protected Health Information and all present and future provisions of HIPAA that relate to the privacy and security of Protected Health Information and that are applicable to Covered Entity and/or Business Associate. In addition, Business Associate agrees to comply with all applicable Illinois State laws governing the privacy, security and confidentiality of protected health information, to the extent such state laws are not preempted by HIPAA. Without limiting the foregoing, to the extent the Business Associate will carry out one or more of the Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by the Service Agreement and this Agreement. Without limiting the generality of the foregoing, Business Associate represents and warrants that Business Associate:

i. Has implemented and will continue to maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information as required by the Security Rule; and

ii. Shall ensure that any agent or subcontractor, to whom Business Associate provides Electronic Protected Health Information, has implemented and will continue to maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information as required by the Security Rule.

c. Reporting. Business Associate agrees to promptly, and in any event within three (3) business days, report to Covered Entity any of the following:

i. Any use or disclosure of Protected Health Information not permitted by this BA Agreement of which Business Associate becomes aware.

ii. Any Security Incident of which Business Associate becomes aware.

iii. The discovery of a Breach of Unsecured Protected Health Information.

A Breach is considered "discovered" as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach. Any notice of a Security Incident or Breach of Unsecured Protected Health Information shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by Business Associate to have been,

accessed, acquired or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach. Any such notice shall be directed to Covered Entity pursuant to the notice provisions of the Services Agreement or to the Privacy Officer of Covered Entity.

d. Investigation. Business Associate shall to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this BA Agreement and/or any Security Incident or Breach.

e. Reports and Notices. Business Associate shall reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, a regulatory body or any third party required to be made under HIPAA, HIPAA Regulations, the HITECH Act, or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

f. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate or its employees, officers, Subcontractors or agents of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement (including, without limitation, any Security Incident or Breach of Unsecured Protected Health Information). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Agreement and/or any Security Incident or Breach. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, a regulatory body or any third party required to be made under HIPAA or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity. Business Associate shall keep Covered Entity fully apprised of all mitigation efforts of the Business Associate required under this Section.

g. Agents/Subcontractors. Business Associate agrees to ensure that any agent and/or subcontractor that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate agrees in writing to restrictions and conditions at least as stringent as those that apply to Business Associate pursuant to this Agreement with respect to such information. Business Associate agrees that, in the event that Business Associate becomes aware of a pattern of activity or practice of an agent and/or subcontractor that constitutes a material breach or violation by the agent and/or subcontractor of any such restrictions or conditions, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, to terminate the contract or arrangement with such agent and/or subcontractor.

h. Access to Designated Record Sets. To the extent that Business Associate possesses or maintains Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, and in the time, format and manner reasonably requested by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual or the Individual's designee in order to meet the requirements under HIPAA. If an Individual makes a request for access to Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual or the Individual's designee.

i. Amendments to Designated Record Sets. To the extent that Business Associate possesses or maintains Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to HIPAA at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity. If an Individual makes a request for an amendment to Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

j. Access to Books and Records. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, 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 to the Secretary, in a time and manner reasonably requested by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with HIPAA.

k. Accountings. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with HIPAA.

l. Requests for Accountings. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.k. of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with HIPAA. If an Individual makes a request for an accounting directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

m. Privacy Requirements. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

3. Permitted Uses and Disclosures by Business Associate.

a. Service Agreement. Except as otherwise limited in this Agreement, Business Associate may only use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate HIPAA if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. All such uses and disclosures shall be consistent with the minimum necessary requirements of HIPAA.

b. De-Identified Data. Business Associate is not authorized to de-identify Protected Health Information or to use or disclose any de-identified Protected Health Information of Covered Entity except as otherwise provided in the Service Agreement. If de-identification is specified in the Service Agreement, Business Associate shall de-identify the information in accordance with 45 CFR 164.514(a)-(c).

c. Use for Administration of Business Associate. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

d. Disclosure for Administration of Business Associate. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that (i) disclosures are Required By Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the Protected Health Information will remain confidential and he used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Permissible Requests by Covered Entity.

Except as set forth in Section 3 of this Agreement, Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. Term and Termination.

a. Term. This Agreement shall be effective as of the date of this Agreement and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall either:

i. Provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, Covered Entity shall terminate: (A) this Agreement; (B) all of the provisions of the applicable Service Agreement that involve the use or disclosure of Protected Health Information; and (C) such other provisions, if any, of the applicable Service Agreement as Covered Entity designates in its sole discretion; or

ii. If Business Associate has breached a material term of this Agreement and cure is not possible, immediately terminate: (A) this Agreement; (B) all of the provisions of the applicable Service Agreement that involve the use or disclosure of Protected Health Information; and (C) such other provisions, if any, of the applicable Service Agreement as Covered Entity designates in its sole discretion.

c. Effect of Termination.

i. Except as provided in Section 5(c)(ii), upon termination of the applicable Service Agreement, for any reason, 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.

ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification 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. In addition, with respect to Electronic Protected Health Information, Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164, to prevent the use or disclosure of the Protected Health Information, for as long as Business Associate retains the Electronic Protected Health Information.

6. Compliance with the Electronic Transaction Standards.

When providing its services and/or products, Business Associate shall comply with all applicable HIPAA standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA ("Covered Transactions"). Business Associate will make its services and/or products compliant with HIPAA's standards and requirements no less than thirty (30) days prior to the applicable compliance dates under HIPAA. Business Associate represents and warrants that it is aware of all current HIPAA standards and requirements regarding Covered Transactions, and Business Associate shall comply with any modifications to HIPAA standards and requirements which become effective from time to time. Business Associate agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to Covered Entity in any form, including, but not limited to, increased fees. Business Associate shall require all of its agents and subcontractors (if any) who assist Business Associate in providing its services and/or products to comply with the terms of this Section 6.

7. Indemnity.

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its employees, trustees, professional staff representatives and agents (collectively, the "Indemnities") from and against any and all claims (whether in law or in equity), obligations, actions, causes of action, suits, debts, judgments, losses, fines, penalties, damages, expenses (including attorney's fees), liabilities, lawsuits or costs incurred by the Indemnities which arise or result from a breach of the terms and conditions of this Agreement, a violation of HIPAA, or a Breach by Business Associate or its employees, agents or subcontractors. Business Associate's indemnification obligations hereunder shall not be subject to any limitations of liability or remedies in the Service Agreement.

8. Miscellaneous.

- a. No HIPAA Agency Relationship. It is not intended that an agency relationship (as defined under the Federal common law of agency) be established hereby expressly or by implication between Covered Entity and Business Associate for purposes of liability

under HIPAA, HIPAA Regulations, or the HITECH Act. No terms or conditions contained in this BA Agreement shall be construed to make or render Business Associate an agent of Covered Entity.

- b. Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.
- c. Amendment. The parties agree to take such action as is necessary to amend the Service Agreement or this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIP AA.
- d. Survival. The respective rights and obligations of Business Associate under Section 5(c), Section 7 and this Section 8(c) of this Agreement shall survive the termination of the Service Agreement or this Agreement.
- e. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.
- f. Third Party Beneficiaries. Covered Entity's subsidiaries and affiliates shall be considered third party beneficiaries of this Agreement and the agreements contained therein.
- g. Miscellaneous. The terms of this Agreement are hereby incorporated into the Service Agreement (s) (including present and future agreements). Except as otherwise set forth in Section 8(d) of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of the Service Agreement, the terms of this Agreement shall prevail. The terms of the Service Agreement which are not modified by this Agreement shall remain in full force and effect in accordance with the terms thereof. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, exclusive of conflict of law rules. Each party to this Agreement hereby agrees and consents that any legal action or proceeding with respect to this Agreement shall only be brought in the state and federal courts located in Cook County, Illinois. This Agreement may be executed in counterparts, each of which when taken together shall constitute one original. Any PDF or facsimile signatures to this Agreement shall be deemed original signatures to this Agreement. No amendments or modifications to this Agreement shall be effected unless executed by both parties in writing. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and this Agreement supersedes and replaces any former business associate agreement or addendum entered into by the parties.

[Signature Page Follows]

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

Covered Entity:

By: _____

Print Name: _____

Print Title: _____

Business Associate:

American Association for Accreditation of Ambulatory Surgery Facilities Inc.

By: 

Print Name: Jeanne Henry

Print Title: Director of Accreditation