



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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BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into on this _ day of _____, 201_ by and between **American Association for Accreditation of Ambulatory Surgery Facilities, Inc.** (the “Business Associate”) and _____ (the “Clinic”) (each a “Party” and collectively the “Parties”). This Agreement shall be effective as of the 14th day of April, 2004 (the “Effective Date”).

WITNESSETH:

WHEREAS, the Clinic is an Rural Health Clinic located at _____, which is a Covered Entity (as defined below);

WHEREAS, the Business Associate is a corporation that accredits rural health clinics;

WHEREAS, the Clinic is accredited by, or seeks to be accredited by, Business Associate;

WHEREAS, the Parties recognize that the Business Associate uses and/or discloses Protected Health Information (as defined below) in its performance of accrediting activities on behalf of the Clinic;

WHEREAS, the Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA” or the “Privacy Rule”); and

WHEREAS, both parties desire to set forth the terms and conditions pursuant to which Protected Health Information, will be handled between the Business Associate and the Clinic and between the Business Associate and certain third parties during the term of this Agreement and after its termination.

NOW THEREFORE, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

1.1. Covered Entity. Covered Entity shall have the meaning set out in its definition at 45 C.F.R. §160.103, as such provision is currently drafted and as it is subsequently updated, amended, or revised.

- 1.2. Designated Record Set. Designated Record Set shall have the meaning set out in its definition at 45 C.F.R. §164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- 1.3. Health Care Operations. Health Care Operations shall have the meaning set out in its definition at 45 C.F.R. §164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.
- 1.4. Privacy Official. Privacy Official s hall have the meaning as set out in its definition at 45 C.F.R. §164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised.
- 1.5. Protected Health Information. Protected Health Information shall have the meaning as set out in its definition at 45 C.F.R. §164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

ARTICLE II

PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

- 2.1. Services. The Business Associate provides accrediting services for the Clinic (the “Services”), which may, at times, involve the use and disclosure of Protected Health Information received from the Clinic. Except as otherwise specified herein, the Business Associate may make any and all uses of Protected Health Information received from the Clinic as necessary to perform such Services, if such uses and/or disclosures would not violate the Privacy Rule if made by the Clinic or conflict with the minimum necessary policies and procedures of the Clinic; provided, however, that any disclosures of Protected Health Information received from the Clinic shall be made only as follows: (i) to employees, subcontractors and agents of the Business Associate in accordance with Section 3.1(e); (ii) as directed by the Clinic, or (iii) as otherwise permitted by the term s of this Agreement including, but not limited to, Section 2.2(b) below. All other uses or disclosures of such Protected Health Information are prohibited.
- 2.2. Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:
 - a. Use Protected Health Information received from the Clinic that is in its possession f or its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws;
 - b. Disclose Protected Health Information received from the Clinic that is in its possession to third parties for the purpose of the proper management and administration of the Business Associate or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Clinic, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. §164.501 or (ii) the Business Associate has received from the third party written assurances regarding its confidential

handling of such Protected Health Information as required under 45 C.F.R. §164.504(e)(4); and/or

- c. Aggregate the Clinic's Protected Health Information in its possession with Protected Health Information of other Covered Entities that the Business Associate has in its possession only if the purpose of such aggregation is to provide the Clinic with data analyses relating to the Health Care Operations of the Clinic. Under no circumstances may the Business Associate disclose Protected Health Information of the Clinic to another Covered Entity absent the explicit authorization of the Facility; and/or

ARTICLE III
RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

- 3.1. Responsibilities of the Business Associate. With regard to its use and/or disclosure of Protected Health Information that is received from the Clinic, the Business Associate hereby agrees to do the following:
 - a. Use and/or disclose such Protected Health Information only as permitted or required by this Agreement or as otherwise required by law;
 - b. Use commercially reasonable efforts to maintain the security of such Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information (an "Improper Use or Disclosure");
 - c. Report to the designated Privacy Official of the Clinic, in writing, any Improper Use or Disclosure of which Business Associate becomes aware within ten (10) days of the Business Associate's discovery of such Improper Use or Disclosure;
 - d. Establish procedures for mitigating, to the greatest extent possible, any harmful effects from any Improper Use or Disclosure that the Business Associate reports to the Clinic;
 - e. Require all of its subcontractors and agents that receive, use, or have access to such Protected Health Information to agree to the same restrictions and conditions on the use and/or disclosure of such Protected Health Information that apply to the Business Associate;
 - f. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of such Protected Health Information, subject to applicable legal privileges, to the Secretary of Health and Human Services ("HHS") for purposes of determining the Clinic's compliance with the Privacy Regulation;
 - g. Within thirty (30) days after receiving a written request from the Clinic, provide to the Clinic such information as is necessary to permit the Facility to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. §164.528;

- h. If the Business Associate maintains Protected Health Information that constitutes a Designated Record Set, within thirty (30) days after receiving a written request from the Clinic, make available Protected Health Information as is necessary for the Clinic to respond to a request for access to Protected Health Information that is not maintained by the Clinic under 45 C.F.R. §164.524;
 - i. If the Business Associate maintains Protected Health Information that constitutes a Designated Record Set, within thirty (30) days after receiving a written request from the Clinic make any amendment(s) to the Protected Health Information that the Clinic directs pursuant to 45 C.F.R. §164.526;
 - j. Subject to Section 4.3 below, return to the Clinic or destroy, within thirty (30) days of the termination of this Agreement, the Protected Health Information that is received from, or created or received on behalf of , the Facility then in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes); and
 - k. Disclose to its subcontractors, agents or other third parties, and request from the Clinic, only the minimum Protected Health Information that is received from, or created or received on behalf of, the Clinic as necessary to perform or fulfill a specific function required or permitted hereunder.
- 3.2. Responsibilities of the Clinic. With regard to the use and/or disclosure of Protected Health Information that is received from the Clinic by the Business Associate, the Clinic hereby agrees:
- a. That it has included, and will include, in its Notice of Privacy Practices that is distributed to all patients a statement that the Clinic may disclose Protected Health Information for Health Care Operations purposes; and
 - b. To provide the Business Associate the necessary information to fulfill its obligations under this Agreement, including but not limited to, a written statement of the restrictions for the disclosure of Protected Health Information that may be made by the Business Associate.

ARTICLE IV

TERMS AND TERMINATION

- 4.1. Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Article IV. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 5.1 herein.
- 4.2. Termination by the Clinic. The Clinic may immediately terminate this Agreement and any related agreements if it makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Clinic, in its sole discretion, may choose to: (i) provide the Business Associate with written notice of the existence of a material breach and afford the Business Associate the opportunity to cure said material breach within thirty (30) days before

terminating this Agreement; or (ii) if it is not possible to cure said breach, continue to operate pursuant to the terms of this Agreement, but report the breach to the Secretary of HHS.

- 4.3. Effect of Termination. Upon the event of termination pursuant to this Article IV , the Business Associate agrees to return or destroy all Protected Health Information that is received from the Clinic, pursuant to 45 C.F.R. §164 .504(e)(2)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any Protected Health Information that is received from the Clinic and is then in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said Protected Health Information, the Business Associate will notify the Clinic in writing. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any such Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of such Protected Health Information infeasible.

ARTICLE V
MISCELLANEOUS

- 5.1. Survival. The respective rights and obligations of Business Associate and the Clinic under the provisions of Sections 4.3 and 5.2 shall survive termination of this Agreement indefinitely.
- 5.2. 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 the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 5.3. Amendment to Com ply with Privacy Rule. Business Associate agrees to take such action as is necessary to amend this Agreement from time to time as is necessary for the Clinic to comply with the requirements of the Privacy Rule.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

Clinic Name: _____

AMERICAN ASSOCIATION FOR
ACCREDITATION OF AMBULATORY
SURGERY FACILITIES, INC.

By: _____
Its: _____
Date _____



By: _____
Its: TST
Date: _____