

SAMPLE

**COLLECTION RIGHTS AND
BUSINESS ASSOCIATE AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, 200__ by and between _____ (“Lender”) and _____ (“Borrower”).

WHEREAS, on _____, 20___. Lender and Borrower entered into a loan agreement (the “Loan”) under which Lender loaned funds to Borrower and took a security interest in Borrower’s accounts receivable (the “Secured A/R”); and

WHEREAS, Borrower wishes to appoint Lender as Borrower’s business associate, as that term is defined in the federal privacy regulations set forth at 45 CFR Part 160 and Part 164 (the “HIPAA Privacy Regulations”) for the purpose of collecting the Secured Accounts in the event of Borrower’s default on the Loan, and Lender agrees to serve as Borrower’s business associate in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authority to Collect and Retain Secured A/R. Upon “default” by Borrower, as that term is defined in the Loan, Borrower grants to Lender an exclusive special power of attorney and appoints Lender as Borrower’s exclusive true and lawful agent and attorney-in-fact, and Lender hereby accepts such special power of attorney and appointment, to collect and retain the Secured A/R.
2. Access to Minimum Necessary Billing Information. Borrower shall provide Lender with access to information needed to collect the Secured A/R. Such information may include protected health information (“PHI”) of Lender’s patients. Lender shall request only the minimum necessary amount of PHI reasonably needed to carry out the purposes of this Agreement
3. Collection of Proceeds.
 - (a) Non-Medicare and Medicaid Proceeds. Lender shall collect, retain, and have exclusive control of all proceeds from Secured A/R payable by sources other than Medicare and Medicaid. Borrower shall take all actions necessary to assure that such proceeds are assigned and paid to Lender. This may include, at Lender’s option, instructing all payors other than Medicare and Medicaid to deposit the proceeds of Secured A/R directly to a bank account under Lender’s control.
 - (b) Medicare and Medicaid Proceeds. Lender and Borrower shall take all actions necessary to assure that all Medicare and Medicaid Secured A/R are deposited directly into an account (the “Medicare Account”) in a federally insured financial institution approved by Lender, which account shall be in Borrower’s name.
 - (i) Borrower shall have sole control of the Medicare Account, and the Medicare Account shall at all times be subject only to Borrower’s instructions.
 - (ii) Borrower shall provide and execute all instruments necessary to allow Lender to sweep the Medicare Account on no less than a daily basis in order to take possession of the proceeds of the Secured A/R.
 - (iii) In the event Borrower revokes Lender’s right to withdraw funds from the Medicare Account, or withdraws funds from the Medicare Account without first obtaining written approval from Lender, or otherwise interferes with Lender’s exclusive right to the proceeds of the Secured A/R, Lender shall have the right (in addition to all other legal rights available to Lender) to seek an immediate court order that all proceeds from the Secured A/R be paid to Lender to repay the Loan.

4. Permitted Uses and Disclosures. Lender shall not use or disclose any PHI other than as permitted by this Agreement in order to perform Lender's obligations hereunder or as required by law. Lender may also use or disclose PHI as required for Lender's proper management and administration, provided that if Lender discloses any PHI to a third party for such a purpose, Lender shall obtain reasonable assurances from such third party requiring that party (i) to hold the PHI confidentially and not to use or further disclose the PHI except as required by law, and (ii) to notify Lender immediately of any instances of which it becomes aware in which the confidentiality of the PHI is breached. Lender shall not use or disclose the PHI in any way that would be prohibited if used or disclosed in such a way by Borrower.
5. Patient Rights. Lender shall establish and maintain adequate internal controls and procedures allowing it to readily assist Borrower in complying with patient requests to exercise any patient rights granted by the Privacy Regulations, and shall, at no additional cost to Borrower, immediately comply with all of Borrower's requests to amend, provide access to, or create an accounting of disclosures of the PHI in the possession of Lender or its agents and subcontractors. If Lender receives a request directly from a patient to exercise any patient rights granted by the Privacy Regulations, Lender shall immediately forward the request to Borrower.
6. Agents and Subcontractors. Lender shall not allow its employees, agents, and subcontractors to use or disclose PHI in any manner except as specifically allowed herein, and shall require any agent or subcontractor that carries out any duties for Lender involving the use, custody, disclosure, creation of, or access to PHI to enter into a written contract with Lender containing provisions substantially similar to the restrictions and conditions set forth in this Agreement.
7. Reporting. Lender shall immediately notify Borrower if it becomes aware of any use or disclosure of PHI in violation of this Agreement. Lender shall also require its employees, agents, and subcontractors to immediately report any use or disclosure of PHI in violation of this Agreement. Lender shall cooperate with Borrower to mitigate any harm caused by such improper disclosure.
8. Safeguards. Lender shall use appropriate physical, technical, and administrative safeguards to prevent the use or disclosure of PHI in any manner other than as provided for by this Agreement. If Lender uses electronic media to obtain, transmit, or store PHI, Lender shall implement appropriate security measures and procedures for its data systems which shall maintain the integrity, availability, and confidentiality of the transmitted information and otherwise prevent unauthorized access to the PHI as required by this Agreement.
9. Audits and Inspections. Lender shall make its internal practices, books, and records relating to the use and disclosure of PHI available, upon request, to the Secretary of Health and Human Services to the extent required for determining Borrower's compliance with the Privacy Regulations. Notwithstanding the above, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by Borrower or Lender by virtue of this provision.
10. Termination and Return of PHI. This Agreement shall terminate automatically upon full repayment of the Loan. Borrower may terminate this Agreement only if Lender breaches any material provision of this Agreement. Lender shall have 30 days in which to cure the breach and mitigate any damages. Upon termination of this Agreement for any reason, Lender shall, if feasible, return or destroy all PHI received from Borrower or created by Lender on behalf of Borrower. If such return or destruction is not feasible, the parties agree that the requirements of this Agreement shall survive termination and that Lender shall limit all further uses and disclosures of PHI to those purposes that make the return or destruction of such information infeasible. Such termination shall not limit or adversely affect Lender's rights to all proceeds from the Secured Accounts.
11. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Borrower to comply with the HIPAA Privacy Regulations. In the event of any inconsistencies between the terms of this Agreement and any other agreement between the parties, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties enter into this Agreement, to become effective as of the date set forth above.

ACCEPTED BY BORROWER:

Signed: _____
Name: _____
Title: _____
Date: _____

ACCEPTED BY LENDER

Signed: _____
Name: _____
Title: _____
Date: _____