

Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into by and between Client and Rolf Goffman Martin Lang LLP (“ROLF”).

RECITALS

WHEREAS, ROLF provides services to or on behalf of Client that may require Client to disclose the individually identifiable health information of some or all of its patients to ROLF or may require ROLF to create health information on behalf of Client;

WHEREAS, it is Client’s policy to protect the confidentiality of its resident information, and to disclose such information only under circumstances and in a manner that is permissible by law, and to require the same of any and all business associates with whom it contracts;

WHEREAS, this Agreement addresses the conditions under which Client will disclose and ROLF will obtain and use an individual’s health information;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I **DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 Code of Federal Regulations (“CFR”) §§ 160.103, 164.402, and 164.501.

- 1.1 HIPAA. The use of the term “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, and all of the implementing regulations of that statute, including Part 160 and 164 of Title 45 of the CFR.
- 1.2 Individual. The use of the term “Individual” in this Agreement 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).
- 1.3 Privacy Rule. The Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.4 Security Rule. The Standards for Security of Individually Identifiable Health Information at 45 CFR parts 160 and 162 and part 164, subparts A and C.
- 1.5 Information. The use of the term “Information” in this Agreement shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by ROLF from or on behalf of Client.
- 1.6 Required By Law. The use of the term “required by law” in this Agreement shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
- 1.7 Breach. The use of the term “Breach” in this Agreement shall have the same meaning as the term “breach” in 45 CFR § 164.402.
- 1.8 Unsecured Information. The use of the term “Unsecured Information” in this Agreement shall have the

same meaning as the term “unsecured protected health information” in 45 CFR § 164.402.

- 1.9 HHS. The Department of Health and Human Services or its designee.
- 1.10 Disclose. The release, transfer or provision of access to Information, whether oral or recorded in any form or medium.
- 1.11 Use. The sharing, employment, application, utilization, examination, or analysis, in any form or medium, of Information within the ROLF organization.

ARTICLE II
RESPONSIBILITIES OF BUSINESS ASSOCIATE / ROLF

- 2.1 Permitted Uses and Disclosures. ROLF agrees not to use or disclose Information other than as permitted or required by this Agreement or as required by law. Except as otherwise limited in this Agreement, ROLF may:
 - 2.1.1 Use or disclose Information to perform functions, activities, or services for, or on behalf of, Client as specified in any service agreement currently in place, or negotiated in the future between the parties, that involves the use or disclosure of Information between Client and ROLF, provided that such use or disclosure does not violate the Privacy Rule.
 - 2.1.2 Use Information for the proper management and administration of ROLF or to carry out the legal responsibilities of ROLF.
 - 2.1.3 ROLF may disclose Information as necessary for the proper management and administration of ROLF, and to carry out its legal responsibilities, if: (a) the disclosure is required by law; or (b) ROLF obtains reasonable assurances from the person to whom Information is disclosed that it will be held confidentially and 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 ROLF of any instances of which it is aware in which the confidentiality of Unsecured Information has been potentially Breached.
 - 2.1.4 Use Information to provide Data Aggregation services to Client as permitted by HIPAA.
- 2.2 Relationship to Individuals.
 - 2.2.1 ROLF agrees that Client and the Individual retain all ownership rights to the Information, and that ROLF does not obtain any right, title or interest to the Information furnished by Client.
 - 2.2.2 ROLF agrees to comply with all lawful requests of Individuals to permit access to inspect and obtain a copy their Information about the Individual that is subject to this Agreement, as required by law, within thirty (30) days of such request.
 - 2.2.3 ROLF agrees that, within fifteen (15) days of a request being made, it will provide Client with any Information requested by Client.
 - 2.2.4 ROLF agrees to make Information available for amendment and to immediately incorporate any amendments or corrections to an Individual’s Information upon request by Client in accordance with applicable law.
- 2.3 Use/Disclosure in Accordance with Law. ROLF understands that both Client and ROLF are subject to state and federal laws governing the confidentiality of the Information. ROLF agrees to abide by all such laws, whether or not fully articulated herein, and to keep the Information in the manner and subject to the standards required by the Privacy Rule and any other applicable state and federal laws. To the extent that ROLF is to carry out Client’s obligations under the Privacy Rule, ROLF agrees to comply with the requirements applicable to the obligation.

2.4 Safeguarding Information. ROLF agrees to abide by the Security Rule, to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of Information that it receives from Client, and to prevent individuals not involved in performing the services that it provides to Client from using or accessing the Information.

2.5 Mitigating Harmful Effects. ROLF agrees to mitigate, to the extent practicable, any harmful effect that is known to ROLF of a use or disclosure of Information by ROLF in violation of the requirements of this Agreement. ROLF shall exercise reasonable diligence to discover any Breach of Information.

ROLF agrees that if Client determines or has a reasonable belief that ROLF may have used, made a disclosure of or permitted access to Information in a way that is not authorized by this Agreement, then Client may in its sole discretion require ROLF to: (a) promptly investigate and provide a written report to Client of the ROLF's determination regarding any alleged or actual unauthorized disclosure, access, or use; (b) cease such practices immediately; (c) return to Client, or destroy, all Information; and (d) take any other action Client deems appropriate.

2.6 Reporting of Violations. ROLF agrees that it will report to Client any use or disclosure of Information received from Client that is not authorized by or otherwise constitutes a violation of this Agreement.

In the event of a Breach of Unsecured Information, ROLF agrees that it will report the Breach to Client. ROLF shall include in its report to Client the following: (a) the identification of each individual whose Information may have been accessed, acquired, used, or disclosed during the Breach; (b) a brief description of what happened, including the date of the Breach and the date of discovery of the Breach; (c) a description of the types of Information that were involved in the Breach; (d) steps Individuals may take to protect themselves from potential harm resulting from the Breach; and (e) a description of what the ROLF is doing to investigate the Breach, mitigate harm to Individuals, and protect against further Breaches. In the event this information is not immediately available, ROLF shall provide the information to Client as soon as it is discovered.

2.7 Agents and Subcontractors. If it becomes necessary for ROLF to share Information that has been disclosed to it by Client with any person or any entity who is not an employee of ROLF, then ROLF agrees to cause such person or entity to enter into a written agreement in which the person or entity agrees to abide by all of the terms to which ROLF is subject under this Agreement with respect to the Information.

2.8 Accounting of disclosures.

2.8.1 ROLF agrees to document disclosures of Information and the details of such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of Information in accordance with HIPAA.

2.8.2 Within ten (10) days of notice by Client of a request for an accounting of disclosures of Information, ROLF shall make available to Client the information required to provide an accounting of disclosures to enable Client to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. If the request for an accounting is delivered directly to ROLF or its agents or subcontractors, ROLF may either provide such information directly to the Individual, or it may forward the information to Client for compilation and distribution to such Individual. Notwithstanding anything in the Agreement to the contrary, ROLF and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this section 2.8.2 for a period of six (6) years after termination of the Agreement.

2.9 Minimum Necessary. ROLF represents and warrants that if it uses or discloses Information or an element of Information, as permitted under this Agreement, it will do so only in the minimum amount and to the minimum number of individuals necessary to achieve the purpose of the services being

rendered to or on behalf of Client. ROLF agrees that it will use all reasonable efforts to limit its request for Information to the minimum amount of Information necessary to achieve the purpose for which the request is being made. ROLF agrees to follow any guidance issued by HHS regarding the minimum necessary standard.

- 2.10 Availability of Information. ROLF shall make any and all internal practices, books, records and Information related to this Agreement available to Client for inspection and/or audit upon request by Client. In addition, ROLF agrees to make its internal practices, books and records relating to the use and disclosure of Information available to HHS for review, upon the request of that Department.

ARTICLE III RESPONSIBILITIES OF CLIENT

- 3.1 Disclosure of Information. Client agrees to disclose Information to ROLF upon its own volition, upon ROLF's request, or upon the request of a third party if such disclosure is permissible by law, so that ROLF may provide the agreed to services to or on behalf of Client, unless Client otherwise objects to the disclosure, or ROLF is no longer providing the services to Client. Client shall not request ROLF to use or disclose Information in any manner that would not be permissible under the Privacy Rule if done by Client.
- 3.2 Notification of Changes and Restrictions.
- 3.2.1 Client shall provide ROLF with any changes in, or revocation of, permission by an Individual to use or disclose Information, if such changes affect ROLF's permitted or required uses and disclosures.
- 3.2.2 Client shall notify ROLF of any restriction to the use or disclosure of Information to which Client has agreed in accordance with HIPAA.
- 3.3 Notice of Privacy Practices. Upon request, Client will provide ROLF with a copy of its notice of privacy practices or direct ROLF to a source where it can be accessed. Client must notify ROLF of limitation(s) in the notice of privacy practices of Client under 45 CFR § 164.520, to the extent that such limitation may affect ROLF's use or disclosure of Information.

ARTICLE IV TERM & TERMINATION

- 4.1 Term. The term of this Agreement shall be effective as of the Commencement Date of Client's underlying engagement agreement with ROLF, and shall terminate when all of the Information provided by Client to ROLF, or created or received by ROLF on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy Information, protections are extended to such Information, in accordance with the termination provisions in this Article IV.
- 4.2 Termination for Cause. Upon Client's knowledge of a material breach by ROLF of a requirement in this Agreement, Client shall provide an opportunity for ROLF to cure the breach or end the violation. Client shall terminate the Agreement if ROLF does not cure the breach, or end the violation, within the time specified by Client. Client may immediately terminate the Agreement if ROLF has breached a material term of this Agreement, and cure is not possible. If neither termination nor cure is feasible, Client shall report the violation to HHS.
- 4.3 Effect of Termination. ROLF agrees that upon termination of the Agreement, ROLF shall contact Client with regard to any Information currently in its possession that was received from or created on behalf of Client, and determine whether Client wishes to have the Information returned to it or destroyed. If feasible, ROLF agrees to proceed in accordance with the Client's instruction to return or destroy Information within thirty (30) days of receiving such instruction. If Client elects to have the

Information destroyed, ROLF agrees to destroy the Information in a manner specified by HHS as a means of securing Information in guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS website.

If ROLF believes that returning or destroying the Information is not feasible on account of a regulatory duty imposed on ROLF by law, or other valid reason, then ROLF shall provide to Client notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of Information is not feasible, ROLF agrees that the protections afforded to such Information by this Agreement will extend indefinitely beyond the term of this Agreement, and that ROLF will limit further uses and disclosures to those purposes that make the return or destruction of the Information infeasible. ROLF agrees that its obligations with regard to notifying Client of any potential Breach will also extend indefinitely beyond the term of this Agreement. ROLF further agrees that no Information, copies of Information, or parts thereof, shall be retained when the aforementioned Information are returned or destroyed.

ARTICLE V

MISCELLANEOUS

- 5.1 **Notices.** Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when provided in accordance with the terms of the underlying engagement agreement between Client and ROLF.
- 5.2 **Assignment.** No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto. Notwithstanding the foregoing, this Agreement shall be deemed to be assigned automatically to any successor entity operating Client or ROLF, and to apply automatically to any services provided pursuant to any agreement entered into between the parties in the future (whether or not specifically referenced herein) that involves the use or disclosure of Information between or by the parties.
- 5.3 **Interpretation.** (a) The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach of the same or other provision hereof. (b) In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. (c) Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural. (d) This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof, and all prior and contemporaneous understandings, agreements and representations, whether oral or written, with respect to such matters are superseded. (e) This Agreement may only be amended by the written consent of both parties. The Parties agree to take such action as is necessary to amend this Agreement from time-to-time as is necessary to comply with the requirements of HIPAA. (f) A reference in this Agreement to a section in the Privacy Rule or Security Rule means the sections as in effect or as amended, and for which compliance is required. (g) Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with the Privacy Rule. (h) This Agreement shall be binding upon the parties hereto and their respective successors and assigns. (i) The aforesaid Recitals are hereby incorporated into this Agreement as if fully set forth herein. (j) Nothing in this Agreement shall be construed as limiting the right of either party to affiliate or contract with any other person or entity on either a limited or general basis while this Agreement is in effect. (k) The respective rights and obligations of ROLF under Article IV of this Agreement shall survive the termination of the Agreement.