

## **BUSINESS ASSOCIATE AGREEMENT: CONSULTANT**

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

### **RECITALS**

WHEREAS, Rolf provides legal services to clients that are covered entities under HIPAA (collectively, “Rolf Clients”);

WHEREAS, Consultant has been engaged and may be engaged in the future by Rolf to provide services to Rolf on behalf of Rolf Clients (the “Underlying Engagements”), and such services may require Rolf and/or Rolf Clients to disclose individually identifiable health information of some or all of their patients to Consultant or may require Consultant to create health information on behalf of Rolf and/or Rolf Clients;

WHEREAS, it is Rolf’s policy to protect the confidentiality of Rolf Clients’ 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 Rolf and/or Rolf Clients will disclose and Consultant 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:

1. **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.
  - a. **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.
  - b. **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).
  - c. **Privacy Rule.** The Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
  - d. **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.
  - e. **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 Consultant from or on behalf of any Rolf Clients.
  - f. **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.
  - g. **Breach.** The use of the term “Breach” in this Agreement shall have the same meaning as the term “breach” in 45 CFR § 164.402.
  - h. **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.
  - i. **HHS.** The Department of Health and Human Services or its designee.

- j. Disclose. The release, transfer or provision of access to Information, whether oral or recorded in any form or medium.
- k. Use. The sharing, employment, application, utilization, examination, or analysis, in any form or medium, of Information within the Consultant organization.

## 2. **Responsibilities of Consultant.**

- a. Permitted Uses and Disclosures. Consultant 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, Consultant may:
  - i. Use or disclose Information to perform functions, activities, or services for, or on behalf of, Rolf Clients as specified in the Underlying Engagements between Rolf and Consultant that involve the use or disclosure of Information between Rolf or Rolf Clients and Consultant, provided that such use or disclosure does not violate the Privacy Rule.
  - ii. Use Information for the proper management and administration of Consultant or to carry out the legal responsibilities of Consultant
  - iii. Consultant may disclose Information as necessary for the proper management and administration of Consultant, and to carry out its legal responsibilities, if: (a) the disclosure is required by law; or (b) Consultant 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 Consultant of any instances of which it is aware in which the confidentiality of Unsecured Information has potentially been Breached.
- b. Relationship to Individuals.
  - i. Consultant agrees that the Rolf Clients and the Individual retain all ownership rights to the Information, and that Consultant does not obtain any right, title or interest to the Information furnished by, or on behalf of, Rolf Clients.
  - ii. Consultant 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.
  - iii. Consultant agrees that, within fifteen (15) days of a request being made, it will provide Rolf Clients with any Information requested by Rolf Clients.
  - iv. Consultant agrees to make Information available for amendment and to immediately incorporate any amendments or corrections to an Individual's Information upon request by Rolf Clients in accordance with applicable law.
- c. Use/Disclosure in Accordance with Law. Consultant understands that both Rolf Clients and Consultant are subject to state and federal laws governing the confidentiality of the Information. Consultant 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 Consultant is to carry out Rolf Clients' or Rolf's obligations under the Privacy Rule, Consultant agrees to comply with the requirements applicable to the obligation.
- d. Safeguarding Information. Consultant 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, or on behalf of, Rolf Clients, and to prevent individuals not involved in performing the services that it provides to Rolf on behalf of Rolf Clients from using or accessing the Information.
- e. Mitigating Harmful Effects. Consultant agrees to mitigate, to the extent practicable, any harmful effect that is known to Consultant of a use or disclosure of Information by Consultant in violation of

the requirements of this Agreement. Consultant shall exercise reasonable diligence to discover any Breach of Information.

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

- f. Reporting of Violations. Consultant agrees that it will immediately report to Rolf any use or disclosure of Information received from Rolf or Rolf Clients that is not authorized by or otherwise constitutes a violation of this Agreement.

In the event of a potential Breach of Unsecured Information, Consultant agrees that it will immediately report the potential Breach to Rolf, and in no event will it fail to report the potential Breach within three (3) days of its discovery by Consultant shall include in its report to Rolf 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 Consultant is doing to investigate the Breach, mitigate harm to Individuals, and protect against further Breaches. In the event this information is not immediately available, Consultant shall provide the information to Rolf as soon as it is discovered.

Consultant shall assist Rolf and/or Rolf Clients as requested to provide notification to affected Individuals, and, if requested by Rolf and/or Rolf Clients, Consultant agrees to provide a toll-free number, e-mail address, website, or postal address for Individuals to ask questions or learn additional information about the Breach. Consultant agrees to be responsible for all costs related to the Breach, including, but not limited to, any costs incurred by Rolf and/or Rolf Clients to mail notifications, maintain a toll-free number or website, research information regarding the Breach, or mitigate the effects of the Breach.

- g. Agents and Subcontractors. If it becomes necessary for Consultant to share Information that has been disclosed to it by Rolf or Rolf Clients with any person or any entity who is not an employee of Consultant, then Consultant 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 Consultant is subject under this Agreement with respect to the Information.
- h. Accounting of Disclosures.
- i. Consultant agrees to document disclosures of Information and the details of such disclosures as would be required for Rolf and/or Rolf Clients to respond to a request by an Individual for an accounting of disclosures of Information in accordance with HIPAA.
  - ii. Consultant agrees to timely assist Rolf and/or Rolf Clients as requested to permit Rolf and/or Rolf Clients to respond to a request by an Individual for an accounting of disclosures of Information in accordance with HIPAA.
- i. Minimum Necessary. Consultant 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 Rolf Clients. Consultant 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. Consultant agrees to follow any guidance issued by HHS regarding the minimum necessary standard.

- j. Availability of Information. Consultant shall make any and all internal practices, books, records and Information related to this Agreement available to Rolf and/or Rolf Clients for inspection and/or audit upon request by Rolf and/or Rolf Clients. In addition, Consultant 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.

### 3. Responsibilities of Rolf/Rolf Clients.

- a. Disclosure of Information. Rolf and Rolf Clients agree to disclose Information to Consultant upon their own volition, upon Consultant's request, or upon the request of a third party if such disclosure is permissible by law, so that Consultant may provide the agreed to services on behalf of Rolf Clients, unless Rolf Clients otherwise object to the disclosure, or Consultant is no longer providing the services on behalf of Rolf Clients. Rolf and Rolf Clients shall not request Consultant use or disclose Information in any manner that would not be permissible under the Privacy Rule if done by Rolf Clients.
- b. Notification of Changes and Restrictions.
  - i. Rolf Clients shall provide Consultant with any changes in, or revocation of, permission by Individuals to use or disclose Information, if such changes affect Consultant's permitted or required uses and disclosures.
  - ii. Rolf Clients shall notify Consultant of any restriction to the use or disclosure of Information that Rolf Clients have agreed to.
- c. Notice of Privacy Practices. Upon request, Rolf will provide Consultant with a copy of the Rolf Clients' notice of privacy practices or direct Consultant to a source where it can be accessed. Rolf Clients may notify Consultant of limitation(s) in its notice of privacy practices under 45 CFR § 164.520, to the extent that such limitation may affect Consultant's use or disclosure of Information.

### 4. Term & Termination.

- a. Term. The term of this Agreement shall be effective as of the Commencement Date of the Underlying Engagements, and shall terminate when all of the Information provided by Rolf and/or Rolf Clients to Consultant, or created or received by Consultant on behalf of Rolf Clients, is destroyed or returned to Rolf Clients, or, if it is infeasible to return or destroy Information, protections are extended to such Information, in accordance with the termination provisions in this section.
- b. Termination for Cause. Upon Rolf's knowledge of a material breach by Consultant of a requirement in this Agreement, Rolf shall provide an opportunity for Consultant to cure the breach or end the violation. Rolf shall terminate the Agreement if Consultant does not cure the breach, or end the violation, within the time specified by Rolf. Rolf may immediately terminate the Agreement if Consultant has breached a material term of this Agreement, and cure is not possible. If neither termination nor cure is feasible, Rolf shall report the violation to HHS.
- c. Effect of Termination. Consultant agrees that upon termination of the Agreement, the protections afforded to Information by this Agreement will extend indefinitely beyond the term of this Agreement until such time that the Information is returned to Rolf Clients or destroyed in accordance with Consultant's document destruction policy.

### 5. Miscellaneous.

- a. Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed to the parties at the addresses identified pursuant to the Underlying Engagements.

- b. Assignment. This Agreement shall be deemed to be assigned automatically to any successor entity operating Rolf or Consultant, 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.
- c. 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 Rolf 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 Consultant under Section 4 of this Agreement shall survive the termination of the Agreement.