



ORTHOPAEDIC SPECIALISTS
OF NORTH COUNTY, INC.

3905 Waring Road, Oceanside, California 92056 Phone (760) 724-9000 Fax (760) 724-3686

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is made on _____, _____ by and between _____ and _____ (“Covered Entities”) and _____ (“Business Associate”).

Introduction

The Covered Entity has entered into a _____ (“Contract”) with the Business Associate. Under the Contract, the Business Associate may have access to Protected Health Information (as defined herein). The purpose of this Agreement is to ensure that the Business Associate properly uses and/or discloses the Protected Health Information in accordance with the Privacy Rule (as defined herein).

Now therefore, in exchange for the mutual promises contained herein, the parties agree as follows:

1. Definitions

- a. “Individual” shall have the same meaning as the term “individual” in 45 CFR §164.501 and shall include persons who qualify as a personal representative in accordance with 45 CFR §164.502(g).
- b. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- c. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR §164.501 limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- d. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.
- e. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Business Associate's Obligations

- a. The Business Associate may use or disclosure Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that the use or disclosure would not violate the Privacy Rule if done by the Covered Entity or the minimum necessary policies and procedures of Covered Entity.
- b. The Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by the Privacy Rule.
- c. The Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. The Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- e. The Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- f. The Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided by this Agreement of which it becomes aware.
- g. The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. The Business Associate agrees to provide access to Protected Health Information in accordance with 45 CFR §164.524.
- i. The Business Associate agrees to make available the Protected Health Information for amendment and incorporate any amendments to the Protected Health Information that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.
- j. The 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 Secretary for purposes of the Secretary's determining the Covered Entity's compliance with the Privacy Rule.

- k. The 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 45 CFR §164.528.
- l. The Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with this Agreement to permit the Covered Entity to respond to a request by an Individual for an accounting or disclosure of Protected Health Information in accordance with 45 CFR §164.528.
- m. The Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- n. The Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).
- o. The Business Associate agrees to follow the Red Flag Rules in Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003. The Business Associate is responsible to train employees to prevent and mitigate identity theft with data available or viewed at the Covered Entity's business.

3. Covered Entity's Obligations

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §165.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4. Term and Termination

- a. The Term of this Agreement shall be effective on the date first above written and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created 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 termination provisions in this Section.
- b. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall immediately terminate this Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Upon termination of this 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.
- d. 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 notice 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.

5. Miscellaneous

- a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability & Accountability Act of 1996, Pub. L. No. 104-191.
- c. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

This agreement was signed by the parties and is effective on the date first above written.

COVERED ENTITY:

Orthopaedic Specialists of North County

By: _____

Its: _____

BUSINESS ASSOCIATE:

By: _____

Its: _____