

## BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“BA Agreement”) amends, supplements, and is made a part of the Agreement (“Agreement”) entered with Client (“CLIENT”) and International Effectiveness Centers (“BUSINESS ASSOCIATE”) and is effective as of the effective date of that Agreement (the “BA Agreement Effective Date”).

### RECITALS

- A. CLIENT, pursuant to the terms of the Agreement, wishes to disclose to BUSINESS ASSOCIATE certain information, some of which may constitute Protected Health Information.
- B. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 164.501.
- C. BUSINESS ASSOCIATE is an individual or entity which provides services, arranges, performs or assists in the performance or activities of CLIENT and who uses or discloses PHI, pursuant to the HIPAA Regulations, 45 CFR Section 160.103.
- D. CLIENT and BUSINESS ASSOCIATE desire to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE in compliance with the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws and regulations.
- E. The purpose of this BA Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“CFR”), as the same may be amended from time to time.

In consideration of the mutual promises made below and the exchange of information pursuant to the Agreement (which includes any amendments thereto) and this BA Agreement (the Agreement and this BA Agreement hereinafter collectively the “Agreements”), the parties agree as follows:

- 1. Responsibilities of BUSINESS ASSOCIATE
  - a. Permitted Uses and Disclosures. BUSINESS ASSOCIATE may use and/or disclose PHI received by BUSINESS ASSOCIATE pursuant to the Agreements solely for the purpose of performing its obligations under the Agreements.
  - b. Restrictions of PHI. BUSINESS ASSOCIATE shall notify CLIENT in writing within five (5) working days of receipt of any request by patients or their representatives to restrict the use and disclosure of the PHI that BUSINESS ASSOCIATE maintains for or on behalf of CLIENT. Upon written notice from

CLIENT, BUSINESS ASSOCIATE agrees to comply with any instructions to modify, delete or otherwise restrict the use and disclosure of such PHI.

- c. Disclosure of PHI. BUSINESS ASSOCIATE may, if necessary, use PHI (i) for the proper management and administration of BUSINESS ASSOCIATE's business or (ii) to carry out BUSINESS ASSOCIATE's legal responsibilities.
- d. Nondisclosure. BUSINESS ASSOCIATE is not authorized and shall not use or further disclose CLIENT' PHI other than as permitted under the Agreement, or as required by law or regulation.
- e. Safeguards. BUSINESS ASSOCIATE shall use appropriate administrative, technical and physical safeguards to prevent any use or disclosure of CLIENT' PHI other than as provided for by the Agreements.
- f. Reporting of Disclosure. BUSINESS ASSOCIATE shall notify CLIENT in writing within five (5) working days of the discovery of any use or disclosure of CLIENT' PHI not permitted by the Agreements which BUSINESS ASSOCIATE or its officers, employees or agents become aware. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- g. Compliance with Law. BUSINESS ASSOCIATE shall comply with all applicable federal and state laws and regulations, including, if applicable under the terms and requirements of the Agreement, the HIPAA Standards for Electronic transactions, 45 CFR Parts 160 and 162.
- h. BUSINESS ASSOCIATE's Agents. BUSINESS ASSOCIATE shall ensure that any agent or subcontractor agrees with BUSINESS ASSOCIATE in writing that the agent or subcontractor will hold the PHI confidentially and use or disclose the PHI only as required by law or for the purpose it was used or disclosed to the agent or subcontractor. Additionally, the agent or subcontractor shall notify BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- i. Availability and Accounting of Information. BUSINESS ASSOCIATE shall, within twenty (20) calendar days of receipt of a written request, provide a copy of the PHI disclosed. BUSINESS ASSOCIATE shall, within twenty (20) calendar days of receipt of a written request, make available to CLIENT and, if authorized in writing by CLIENT, to the subject of the PHI, such information as may be required to fulfill the obligations of CLIENT to provide access to, provide a copy of, and account for disclosures of CLIENT' PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Sections 164.524 and 164.528. The accounting shall include: i) the date of the disclosure, ii) the name and address of the entity or person who received the PHI, iii) a brief description of the PHI disclosed, and iv) a brief statement of the basis for the disclosure or a copy of an authorization for the disclosure.
- j. BA Agreement of PHI. BUSINESS ASSOCIATE shall inform CLIENT within five (5) working days of receipt of any request by or on behalf the subject of the PHI to amend the PHI BUSINESS ASSOCIATE maintains for or on behalf of CLIENT. BUSINESS ASSOCIATE shall, within twenty (20) calendar days of receipt of a

written request, make the subject's PHI available to CLIENT as may be required to fulfill CLIENT obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526. BUSINESS ASSOCIATE shall, as directed by CLIENT, incorporate any BA Agreements for CLIENT' PHI into copies of such PHI maintained by BUSINESS ASSOCIATE.

- k. Regulatory Compliance. BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of PHI received from CLIENT (or created or received by BUSINESS ASSOCIATE on behalf of CLIENT) available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining CLIENT' compliance with the HIPAA Regulations.
  - l. Inspection of Records. Within thirty (30) calendar days of a written request, BUSINESS ASSOCIATE shall make available to CLIENT during normal business hours all records, books, agreements, policies and procedures relating to the use and/or disclosure of CLIENT PHI for purposes of enabling CLIENT to determine BUSINESS ASSOCIATE's compliance with the terms of this BA Agreement.
  - m. Certification. CLIENT, and its authorized agents or contractors, may examine BUSINESS ASSOCIATE's facilities, systems, procedures, and records as may be necessary to determine the extent to which BUSINESS ASSOCIATE's security safeguards comply with HIPAA, the HIPAA Regulations, or this BA Agreement.
2. Termination.
- a. Material Breach. A breach by BUSINESS ASSOCIATE of any material provision of this BA Agreement, as determined by CLIENT, shall constitute a material breach of the Agreement, and shall provide grounds for immediate termination of the Agreement by CLIENT.
  - b. Effect of Termination. Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall return or, at the option of CLIENT, destroy all PHI received from CLIENT, or created and received by BUSINESS ASSOCIATE on behalf of CLIENT, that BUSINESS ASSOCIATE still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, BUSINESS ASSOCIATE shall continue to extend indefinitely the protections of this BA Agreement to such information, and immediately terminate any further use or disclosure of such PHI.
3. Changes to the BA Agreement.
- a. Compliance with Law. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that changes to this BA Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable state and federal laws relating to the security or confidentiality of PHI.
  - b. Negotiations. In the event that a state or federal law, statute, or regulation materially affects the Agreement or this BA Agreement, the parties agree to

negotiate immediately in good faith any necessary or appropriate revisions to the Agreement or this BA Agreement. If the parties are unable to reach an agreement concerning such revisions within the earlier of sixty (60) calendar days after the date of notice seeking negotiations or the effective date of a change in law or regulation, or if the change is effective immediately, then CLIENT may immediately terminate this Agreement upon written notice to BUSINESS ASSOCIATE.

4. Insurance and Indemnification.

- a. Insurance. Each party, at its sole cost and expense, shall insure its activities in connection with this BA Agreement. Specifically, BUSINESS ASSOCIATE and CLIENT shall each obtain, keep in force and maintain insurance or equivalent programs of self-insurance with appropriate limits that shall cover losses that may arise from breach of this BA Agreement, breach of security, or any unauthorized use or disclosure of PHI. It should be expressly understood, however, that the insurance required herein shall in no way limit the liability of BUSINESS ASSOCIATE or CLIENT with respect to its activities in connection with this BA Agreement.
- b. Indemnification by BUSINESS ASSOCIATE. BUSINESS ASSOCIATE agrees to defend at CLIENT election, indemnify, and hold harmless CLIENT, its officers, agents and employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses, (including costs and reasonable attorneys' fees) or claims for injury or damages that are caused by or result from the acts or omissions of BUSINESS ASSOCIATE, its officers, agents or employees with respect to the use and disclosure of CLIENT' PHI.
- c. Indemnification by CLIENT. CLIENT agrees to defend at BUSINESS ASSOCIATE's election, indemnify, and hold harmless BUSINESS ASSOCIATE, its officers, agents and employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses, (including costs and reasonable attorneys' fees) or claims for injury or damages that are caused by or result from the acts or omissions of CLIENT, its officers, agents or employees with respect to the use and disclosure of CLIENT' PHI.

5. Miscellaneous Provisions.

- a. No Third Party Beneficiaries. Nothing express or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than CLIENT, BUSINESS ASSOCIATE and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- b. Notice to Secretary. If CLIENT knows of a pattern of activity or practice of BUSINESS ASSOCIATE that constitutes a material breach or violation of BUSINESS ASSOCIATE's obligation under this BA Agreement, if the breach or violation continues, and if termination of this BA Agreement is not feasible, CLIENT is required by the HIPAA regulations to report the problem to the Secretary of Health and Human Services.
- c. Survival. The obligations of BUSINESS ASSOCIATE under Sections 1(k), 1(1), 2(b), 4(b), 4(c) and 5(a) of this BA Agreement shall survive the termination of this Agreement.

- d. Notices. Any notices to be given to either party shall be made via U.S. Mail or express courier to the address given below and/or via facsimile to the facsimile telephone numbers listed below.

Client

BUSINESS ASSOCIATE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

Attention: \_\_\_\_\_

Each party may change its address and its representative for notice by giving notice in the manner provided above.

6. Term

Term. The term of this BA Agreement shall be from the BA Agreement Effective Date through and including the termination of the business relationship between CLIENT and BUSINESS ASSOCIATE.

IN WITNESS WHEREOF, the parties hereto have duly executed this BA Agreement as of the BA Agreement Effective Date.

Client

INTERNATIONAL EFFECTIVENESS CENTERS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title