



## **INTEGRATED PRACTICE SOLUTIONS**

### **Business Associate Agreement**

Customer (“Covered Entity”) and INTEGRATED PRACTICE SOLUTIONS, LLC (“Business Associate”) have already formed a business relationship pursuant to the Software Service Agreement. This Business Associate Addendum is hereby made a part of the Software Service Agreement and related contractual agreements existing between them (or entered into in the future) (the “Contractual Agreements”) pursuant to which Covered Entity discloses or provides Protected Health Information to Business Associate. In connection with the services which Business Associate provides to Covered Entity under the Contractual Agreements, Covered Entity plans to disclose or provide access to Protected Health Information to Business Associate that is subject to certain restrictions and obligations pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations (45 C.F.R. Parts 160-64) (“HIPAA”), and the Health Information Technology for Economic and Clinical Health Act, Division A of Title XIII of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”). As a result, this Addendum sets forth the terms and conditions pursuant to which PHI that is provided by, created by, or received by Business Associate, from or on behalf of Covered Entity, shall be managed. This Addendum supplements and/or amends each of the contractual obligations in the Agreement with respect to Business Associate’s receipt, use, and/or creation of PHI thereunder, so as to allow Covered Entity and Business Associate to comply with the HIPAA Rules.

#### **Definitions**

Catch-all definition:

The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean INTEGRATED PRACTICE SOLUTIONS, LLC.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean Customer.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### **Obligations and Activities of Business Associate**

Business Associate agrees to:

(a) Neither use nor disclose Protected Health Information other than as permitted or required by this BAA or the Contractual Agreements or as required by law (Covered Entity represent and warrants that it has obtained any and all licenses, approvals and consents required to use, disclose to Business Associate or otherwise make available to Business Associate Protected Health Information);

(b) Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information ("PHI") to prevent use or disclosure of Protected Health Information other than as provided for by this BAA;

(c) Report to Covered Entity any use or disclosure of PHI not provided for by this BAA of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware (mere reporting of any such breaches does not constitute or impose on Business Associate liability for any such breaches); Business Associate may, but is not obligated to, perform its own risk assessment, pursuant to 45 CFR 164.402; however, nothing herein provided is intended to relieve Covered Entity of any of its obligations pursuant to the HIPAA Breach Notification Rule

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308 (b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) Make available PHI in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528

(h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) In the event Business Associate receives requests directly from an individual regarding his/her PHI, Business Associate as a courtesy may, but is not required to provide responses and notices directly to the individual; however, nothing herein is intended to relieve Covered Entity of any of its obligations and liabilities under the HIPAA Breach Notification Rule or Contractual Agreements.

### **Permitted Uses and Disclosures by Business Associate**

(a) Business Associate may make any and all uses or disclosures of Protected Health Information as set forth in the Contractual Agreements and as necessary to perform the services set forth in this BAA and the Contractual Agreements.

(b) Business Associate may use or disclose Protected Health Information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's policies and procedures provided in writing by Covered Entity to Business Associate in accordance with Covered Entity requirements in this BAA.

(d) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below (Covered Entity represent and warrants that it has obtained any and all licenses, approvals and consents required to use, disclose to Business Associate or otherwise make available to Business Associate Protected Health Information).

(e) Business Associate may use or disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(f) Business Associate may de-identify PHI obtained by Business Associate under this BAA and the Contractual Agreements and use such de-identified data.

(g) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

(h) Business Associate shall not use or disclose Protected Health Information for the purpose of investigating, identifying, or imposing liability on any person for the lawful provision, receipt, or facilitation of reproductive health care, or to otherwise take action adverse to any person based on such lawful reproductive health care, except as permitted under applicable law and HIPAA.

## **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

Covered Entity also shall notify Business Associate of any changes in, or revocation of, permission by an 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.

Covered Entity also 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.

## **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity or any in any manner that would violate this BAA, the Contractual Agreements or the HIPAA Rules .

Covered Entity may make a request to Business Associate to provide information regarding Business Associate's Security Officer, and general assurance of the use of appropriate safeguards with respect to PHI, annually. Business Associate will provide information and assurances to the extent and in the manner deemed necessary and appropriate by Business Associate. Covered Entity agrees to be responsible for the costs, fees, and expenses associated with any such provision of information to Covered Entity.

## **Indemnification**

Each party shall indemnify and hold harmless the other party and its officers, employees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the indemnified party or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by a party or its employees, agents, servants, partners, principals, or subcontractors.

## **Term and Termination**

(a) Term. The Term of this BAA shall be effective as of the date set out below and shall terminate on the date set out in the Contractual Agreements, if applicable, between the parties as that date may be modified from time to time, or on the date Covered Entity

terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this BAA by Covered Entity upon ninety (90) calendar days' written notice, if Covered Entity determines Business Associate has violated a material term of this BAA and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity. If Business Associate determines that Covered Entity has breached a material term of this BAA or that the condition of performance under this BAA has so changed that Business Associate determines it is not practicable or possible to comply with the new condition, Business Associate may terminate this BAA and any related Contractual Agreements upon ninety (90) calendar days' written notice.

(c) Obligations of Business Associate upon Termination. Business Associate shall, unless a longer period is required by applicable law or Business Associate's policies, retain Protected Health Information received from Covered Entity for a period of not more than sixty (60) days from date of termination of this BAA for whatever cause, or for such other period during which Covered Entity and Business Associate shall have made provision for return or authorized destruction of all PHI. Thereafter, Business Associate shall return or destroy all PHI Business Associate still maintains in any form. In the event that Business Associate determines that returning or destroying the PHI or a subset thereof is not feasible or practicable, Business Associate shall provide to Covered Entity notification of the conditions that make the return or destruction infeasible or not practicable, and, for so long as Business Associate maintains such PHI, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible or not practicable. Covered Entity is solely responsible for complying with all laws and regulations related to retention of medical records, patient access and authorization to use, disclose and release patient data. Without limiting the foregoing, Covered Entity represent and warrants that it has obtained any and all licenses, approvals and consents required to use, disclose to Business Associate or otherwise make available to Business Associate Protected Health Information. All costs, fees, and expenses associated with the return or migration of information or data subject to this Business Associate Agreement or the Contractual Agreements shall be paid by Covered Entity or reimbursed by Covered Entity.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

### **General Provisions**

(a) Upon the effective date of any applicable final regulation or applicable amendment to final regulations promulgated by the Department of Health and Human Services, this BAA and Contractual Agreements of which it is part will automatically be deemed to have been amended so that the parties may remain in compliance with the regulations.

(b) The parties acknowledge and agree that this BAA will be deemed to have been jointly

prepared by the parties and their respective legal counsel and will not be strictly construed against either party.

(c) Except as otherwise provided herein, the terms and conditions of this BAA will override and control any expressly conflicting term or condition of the Contractual Agreements between Covered Entity and Business Associate. All non-conflicting terms and conditions of such Contractual Agreements (including without limitation those related to customer data and security, warranties, disclaimers, indemnification and limitations of liability) remain in full force and effect.

(d) Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA or its Business Associate Agreement with its client.

(e) This Business Associate Agreement shall be governed in all respects by the laws of the state of California. The parties hereby consent to the exercise of exclusive jurisdiction in the County of San Diego, State of California for any claim relating to the enforcement of, or any rights under, this BAA.

(f) This Business Associate Agreement may be modified and amended, from time to time, by Business Associate by issuance and service upon Covered Entity of a modified or amended Business Associate agreement or addendum.

**IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement.**

**INTEGRATED PRACTICE SOLUTIONS, LLC**

Business Associate

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER**

Covered Entity

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_