

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO S.C. CODE ANN. § 15-48-10 et seq.,
AS MODIFIED HEREIN

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

**BUSINESS ASSOCIATE
AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 20____ by and between Fort City Plastic Surgery, a South Carolina corporation (hereinafter referred to as "Practice"), and _____, an [entity] (hereinafter referred to as "Business Associate").

WHEREAS, this Agreement is entered into between the Practice and Business Associate in accordance and compliance with the Health Insurance Portability and Accountability Act; and

WHEREAS, the Practice desires to engage an independent contractor to perform the services of a business associate as defined in this Agreement; and

WHEREAS, Business Associate desires to be engaged by the Practice to perform the services as a Business Associate as defined herein in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and promises set forth below, the parties hereby agree as follows:

1. DEFINITIONS

1.1 General Definition

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

1.2 Specific Definitions

(a) Business Associate. "Business Associate" shall mean _____.

(b) Practice. "Practice" shall mean ~~Park City~~ Plastic Surgery.

(c) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(d) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR §§ 160 and part 164, subparts A and E.

(e) Protected Health Information. "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 Practice.

(f) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.501.

(g) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

2.1 Use and Disclosure of PHI.

Business Associate may use and disclose Protected Health Information only to carry out the obligations of Business Associate set forth in this Agreement, the Business Associate Agreement or as required by law, subject to the provisions set forth in this Agreement. Business Associates shall neither use nor disclose Protected Health Information for the purpose of creating de-identified information that will be used for an purpose other than to carry out the obligations of Business Associate set forth in this Agreement or the Business Associate Agreement, or as required by law.

2.2 Safeguards Against Misuse of Information.

Business Associate agrees that it will implement appropriate safeguards to prevent the use or disclosure of Protected Health Information in any manner other than pursuant to the terms and conditions if this Agreement.

2.3 Mitigation.

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of

the requirements of this Agreement.

2.4 Reporting of Disclosure.

Upon becoming aware of a use or disclosure of Protected Health Information in violation of this Agreement, Business Associate shall promptly report such disclosure to Practice.

2.5 Agreements with Third Parties.

Business Associate shall ensure that any agent or subcontractor to whom Business Associate provided Protected Health Information that is received from Practice, or created or received by Business Associate on behalf of Practice, agrees to be bound by the same restrictions and conditions that apply to Business Associate pursuant to this Agreement with respect to such Protected Health Information. Business Associate warrants and represents that in the event of a disclosure of Protected Health Information to any third party, the information disclosed shall be no more than the minimum necessary for the intended purpose.

2.6 Access to Information.

In the event Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall within five (5) business days of receipt of a request from Practice, provide to Practice Protected Health Information in Business Associate's possession that is required for Practice to respond to an individual's request for access to Protected Health Information made pursuant to 45 CFR §164.524 or other applicable law. In the event any individual requests access to Protected Health Information directly from Business Associate, whether or not Business Associate is in possession of Protected Health Information, Business Associate may not approve or deny access to the PHI requested. Rather, Business Associate shall, within two (2) business days forward such request to Practice.

2.7 Availability of PHI for Amendment.

In the event Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall, within five (5) business days of receipt of a request from Practice, provide to Practice Protected Health Information in Business Associate's possession that is required for Practice to respond to an individual's request to amend Protected Health Information made pursuant to 45 CFR § 164.526 or other applicable law. If the request is approved, Business Associate shall incorporate any such amendments to the Protected health Information as required by 45 CFR §164.526 or other applicable law. In the event that the request for the amendment of Protected Health Information is made directly to Business Associate, whether or not Business Associate is in possession of Protected Health Information, Business Associate may not approve or deny the requested amendment. Rather, Business Associate shall, within two (2) business days, forward such request to Practice.

2.8 Availability of Books and Records.

Business Associate hereby agrees to make its applicable internal practices, books and records available to the Secretary for purposes of determining Business Associates and Practice's compliance with the Privacy Standards. The practices, books and records subject to this Section are those practices, books and records that relate to the use and disclosure of Protected Health Information that is created by Business Associate on behalf of the Practice, received by Business Associate from Practice, or received by Business Associate from a third party on behalf of Practice.

2.9 Accounting of Disclosures.

In the event Business Associate maintains Protected Health Information in a Designated Record Set, it shall, within ten (10) business days of receipt of a request, provide to Practice such information as is in Business Associate's possession and is required for the Practice to respond to a request for an accounting made in accordance with 45 CFR § 164.528 or other applicable law. In the event the request for an accounting is delivered directly to the Business Associate, Business Associate shall, within two (2) business days, forward such request to the Practice. It shall be the Practice's responsibility to prepare and deliver any such accounting requested. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section in the event that it maintains Protected Health Information.

2.10 Return of Records.

Upon termination of the Agreement, Business Associate shall, if feasible, return or destroy all Protected Health Information received from, created or received on behalf of the Practice that Business Associate maintains in any form and shall not retain any copies of such Protected Health Information, or if such return or destruction is not feasible, extend the protections in this Agreement to such Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of such Protected Health Information infeasible.

2.11 Liability.

No exculpation or limitation on Business Associate's liability set forth in the Business Associate Agreement shall apply to direct damages suffered by Practice as a result of Business Associate's breach of this Agreement. Any indemnification of Practice by Business Associate for claims arising from Business Associate's breach of confidentiality obligations in the Agreement shall apply to Business Associate's breach of this Agreement.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.1 General Use and Disclosure Provision.

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Practice for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Practice:

3.2 Specific Use and Disclosure Provision.

(a) Except as otherwise limited in this Agreement, 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.

(b) Except as otherwise limited in this Agreement, 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.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Practice as permitted by 42 CFR 164.504(e)(2)(i)(B).

4. RESTRICTIONS ON OTHER BUSINESS ACTIVITIES.

During the term of this Agreement, Business Associate shall devote sufficient time to perform the duties specified in **Exhibit 1**. Business Associate may, without Practice's prior consent, render to other professional work, including work as a business associate, for itself or on behalf other corporations, entities or individuals consulting services for compensation as long as such services do not materially interfere or conflict with the performance of his duties under this Agreement.

5. INDEPENDENT CONTRACTOR.

In performing the work under this Agreement, Business Associate will be acting and performing as an

independent contractor and not as an officer, agent, servant or employee of Practice. Practice shall have no right to control the manner or method by which Business Associate performs its work pursuant to this Agreement. Practice's sole interest is to insure that quality work is delivered, and that Business Associate complies with the terms of this Agreement and with all applicable federal laws, state laws and regulations. Business Associate shall have no right to salary, employment benefits or other employment rights. Business Entity shall be solely responsible for, and shall hold Practice harmless and indemnify Practice for, all matters relating to compliance with all laws and regulations governing Business Associate's payment of income-tax, self-employment tax, withholding, worker's compensation, and social security. Any and all agents or employees of Business Associate shall be employees or agents of Business Associate and not employees or agents of Practice.

6. OBLIGATIONS OF PRACTICE.

6.1 Practice shall provide Business Associate with the Notice of Privacy practices that Practice produces in accordance with 45 CFR § 164.520, as well as any changes to such Notice.

6.2 Practice shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

6.3 Practice shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Practice has agreed to in accordance with 45 CFR § 164.522.

7. PERMISSIBLE REQUESTS BY PRACTICE.

7.1 Practice shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Practice.

8. TERM AND TERMINATION.

8.1 Term.

The term of this Agreement shall be effective as of April 14, 2003, and shall terminate when all of the Protected Health Information provided by Practice to Business Associate, or created or received by Business Associate on behalf of Practice, is destroyed or returned to Practice, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

8.2 Termination for Cause.

Upon Practice's knowledge of a material breach by Business Associate, Practice shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Practice, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

8.3 Effect of Termination.

- (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Practice, or created or received by Business Associate on behalf of Practice. 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.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Practice notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties 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.

9. MISCELLANEOUS.

9.1 Alternate Dispute Resolution Mandated.

The alternate dispute resolution methods contained in this Section 9 shall apply to this entire Agreement, except as specifically stated otherwise herein.

9.1.1 Mediation.

Practice and Business Associate expressly agree that they shall seek mediation as their preferred method of handling claims, disputes, or other matters in question which may arise between them. The mediation process may be initiated by any party at such times as the parties have been unable to reach a

mutually agreed upon resolution to a problem within a reasonable period of time, and at such time as it appears that such a resolution is not likely to be obtainable.

9.1.2 Arbitration.

Any issues that remain unresolved following such mediation shall be submitted to binding arbitration pursuant to the Uniform Arbitration Act (S.C. Code Ann. § 15-48-10 *et seq.*) and to the extent that the Act may be supplemented by agreement, and upon the written consent of the parties, the arbitration rules of the American Health Lawyers Association Alternative Dispute Resolution Service or a comparable nationally recognized dispute resolution body that is agreed upon by the parties, shall apply. Arbitration shall take place in Charleston County, South Carolina. Each of the parties shall use all reasonable efforts to ensure that any arbitration proceeding is completed within sixty (60) days following notice of a request for arbitration hereunder.

9.1.3 Expenses.

All expenses incurred for the services of a mediator shall be shared equally by the parties participating in the mediation process. Each party shall bear its own attorney costs, if any. All expenses incurred for the arbitration proceeding, which may include attorney costs, shall be paid by the party or parties so ordered in the decision of the arbitrator.

9.2 Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

9.3 Amendment.

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Practice to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

9.4 Amendments - Written Agreement.

No amendments or additions to this agreement shall be binding unless in writing and signed by the parties hereto.

9.5 Survival.

The respective rights and obligations of Business Associate under Section 8.3 of this Agreement shall survive the termination of this Agreement.

9.6 Interpretation.

9.10 Severability.

The invalidity or partial invalidity of any portion of this Agreement shall not invalidate the remainder thereof, and said remainder shall remain in full force and affect.

9.11 Waiver.

A party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect the validity or enforceability, or constitute a waiver of future enforcement, of that provision or of any other provision of this Agreement by that party or any other party.

9.12 Counterparts.

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

9.13 Further Acts.

Each party agrees to perform any reasonable further act to execute and deliver any reasonable instruments or documents that may be necessary or reasonably deemed advisable to carry out the purposes of this Agreement.

9.14 Entire Agreement.

The parties hereto expressly acknowledge that this Agreement constitutes the entire contract between the parties and that, unless otherwise provided in this Agreement, any other agreements or understandings, oral or written, of any nature with respect to such matters are hereby superseded and of no force and effect.

9.15 Binding Successors.

This Agreement shall be binding upon the parties and their respective heirs, personal representatives, successors, and assigns but nothing contained herein shall be construed as giving any party the right to assign his or its rights hereunder.

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Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Practice to comply with the Privacy Rule.

9.7 Notices.

Any and all notices, offers or other communications provided for in this Agreement shall be in writing, shall be signed by the party giving the same, and shall be delivered personally, or mailed, by certified mail, return receipt requested, postage prepaid, addressed to the party to whom such communication is directed as herein below provided. Notice shall be deemed to be given and received hereunder on the date of delivery if personally delivered and on the date of mailing if mailed as aforesaid. Such notice shall be addressed as follows:

If to Port City Plastic Surgery:

Attn: Cindy
2683 Lake Park Dr
Char, SC 29406

If to _____:

With Copy to:

Any party may change his or its address at any time by giving the other party notice thereof.

9.8 Headings.

The Section and Article headings in this Agreement are inserted for convenience only and are not part of this Agreement.

9.9 Governing Law, Jurisdiction.

This Agreement shall be subject to and governed by the laws of the State of South Carolina.

Execution

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Port City Plastic Surgery

Witness to Port City Plastic Surgery

Its: _____
Date: _____

Witness to _____

Its: _____
Date: _____