

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This business associate Agreement (“Agreement”), effective as of (“Effective Date”), is entered into by and between The Doctor’s Note®, 290 Oak Grove Dr., Moscow, TN 38057 (“Vendor”), and (“Covered Entity”) With an address at (each a “Party and collectively the “Parties”).

### RECITALS

WHEREAS, Vendor is entrusted with confidential patient information for use in providing transcription and related services to Covered Entity; and

WHEREAS, both Parties wish to meet their obligations under the standards of privacy of individually identifiable health information (the “privacy rule”) published by the US. Department of Health and Human Services (“HHS”) at 45 C.F.R. parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and

WHEREAS, both Parties wish to set forth the terms and conditions pursuant to which confidential patient information created or received by Vendor in the performance of services for or on behalf of the Covered Entity (“protect health information”) will be handled between themselves and with third parties; and

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follow:

#### **1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.**

1.1 Services. Vendor provides transcription and related services (“Services”) that involve the use and/or disclosure of protected health information. These Services are provided to the Covered Entity under an agreement (“Service Agreement”) that specifies the Services to be provided by Vendor. Except as otherwise specified herein, Vendor may make any and all uses of protected health information received from or created on behalf of the Covered Entity provided, however, that all other uses not authorized by this Agreement, the Service Agreement, or other written instruction from Covered Entity, are prohibited. Moreover, Vendor may disclose protected health information for the purposes authorized by this Agreement only (i) to its employees, subcontractors and agents in accordance with Section 2.1 (e.) below, (ii) as directed by Covered Entity, or (iii) as otherwise permitted by the terms of this Agreement including, but not limited to Section 1.2 (b) below.

1.2 Business Activities of Vendor, Unless otherwise limited herein, Vendor may

- (a) use the protected health information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Vendor and
- (b) disclose the protected health information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Vendor, provided that (i) the disclosures are “required by law”, as defined in 45 C.F.R. § 164.501, or (ii) Vendor has received from the third party written assurance regarding its confidential handling of such protected health information as required under 45 C.F.R. § 164.504 (e) (4)

## **2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION.**

### **2.1 Responsibilities of Vendor, With regard to its use and /or disclosure of protected health information, Vendor agrees to:**

- (a) use and/or disclose the protected health information only as permitted or required by this Agreement or as otherwise required by law;
- (b) use commercially reasonable efforts to maintain the security of the protected health information and to prevent the unauthorized use and/or disclosure of such protected health information;
- (c) report to Covered Entity, in writing, any use and/or disclosure of the protected health information that is not permitted or required by this Agreement of which Vendor becomes aware within five (5) days of Vendor’s discovery of such unauthorized use and/or disclosure;
- (d) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of protected health information that Vendor reports to the Covered Entity;
- (e) require all of its subcontractors and agents that receive, use, or have access to protected health information under this Agreement to agree to adhere to the same restrictions and conditions on the use and/or disclosure of protected health information that apply to Vendor pursuant to this Agreement and to provide adequate safeguards against improper use or disclosure;
- (f) at the request of, and in the time and manner designated by Covered Entity, provide access to the protected health information to Covered Entity, or the individual to whom such protected health information relates, or his or her authorized representative, in order to satisfy a request by such individual under HIPAA;
- (g) at the request of, and in the time and manner designated by Covered Entity, make any amendment (s) to the protected health information that Covered Entity directs;
- (h) upon written request of Covered Entity, make available within ten (10) days such information in Vendor’s possession which is necessary for Covered Entity to make an accounting of disclosures of an individual’s protected health information;

- (i) forward to Covered Entity within two (2) business days of receipt any request by a patient of Covered Entity for access to or an accounting of disclosures of protected health information directly from Vendor;
  - (j) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy rule; and
  - (k) subject to Section 4.5 below, return to Covered Entity or destroy, within five (5) days of the termination of this Agreement, the protected health information in its possession and retain no copies (which for purposes of this Agreement shall mean segregable databases, files, or recording media identifiable to Covered Entity and/or clients that are used by Vendor in providing Services on behalf of the Covered Entity).
- 2.2. Responsibilities of Covered Entity. With regard to the use and/or disclosure of protected health information by Vendor, Covered Entity agrees:
- (a) that it will not furnish Vendor protected health information that is subject to restrictions on use and/or disclosure as provided for in 45 C.F.R. § 154.522 and agreed to by Covered Entity.
  - (b) to notify Vendor, in writing, of any protected health information that Covered Entity seeks to make available to a patient pursuant to 45 C.F.R. § 164.524 and agree with Vendor as to the time, manner, and form in which Vendor shall provide such access.

### **3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

- 3.1. Each Party represents and warrants to the other Party:
- (a) that all of its employees, agents, representatives and members of its workforce whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the applicable terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all applicable provisions of this Agreement;
  - (b) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement; and
  - (c) that it is prepared to comply with those provisions of this Agreement required by the Privacy rule on or before April 14, 2003.

### **4. TERM AND TERMINATION**

- 4.1. Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this Agreement shall survive the expiration or termination of this Agreement in accordance with Section 5.4 herein.

- 4.2 Termination by Covered Entity. Covered Entity may immediately terminate this agreement if Covered Entity determines that Vendor has breached a material term of this Agreement.
- 4.3 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Service Agreement between Covered Entity and Vendor.
- 4.4 Effect of Termination. Upon the termination of this Agreement pursuant to this Section 4, Vendor agrees to return or destroy with five (5) days all protected health information identifiable to Covered Entity and/or client, including such information in possession of Vendor's subcontractors, if it is feasible to do so.

## 5. MISCELLANEOUS

- 5.1. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the Parties' compliance with federal and/or state health information confidentiality laws and regulations, as well as the Parties' obligations under Vendor provisions of 45 C.F.R. parts 160 and 164. This Agreement supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the Parties hereto relating to the Parties' compliance with federal and/or state health information confidentiality laws and regulations and the Parties' health information confidentiality and security obligations under 45 C.F.R. parts 160 through 164.
- 5.2. Change of Law. The Parties agree to negotiate in good faith mutually acceptable and appropriate amendment (s) to this Agreement to give effect to any amendment to any provision of HIPAA, or its implementing regulations set forth at 45 C.F.R. parts 160 through 164, which materially alters either Party's or both Parties' obligation under this Agreement; provided, however, that if the Parties are unable to agree on mutually acceptable amendment (s) within thirty (30) days of the relevant change of law, either party may terminate this Agreement consistent with sections 4.5 and 5.4.
- 5.3. Construction of Terms. The terms of this Agreement shall be construed in light of any interpretation and/or guidance on HIPAA and the Privacy rule issued by HHS from time to time.
- 5.4. Survival. Section 6 and this Section 5.4 shall survive termination of this Agreement. The respective rights and obligations of Vendor and Covered Entity under the provisions of Sections 2.1, and 4.5, shall survive termination of this Agreement for so long as such information is retained.
- 5.5. Amendment: Waiver. This Agreement may not be modified, normal shall any provisions hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.

**VENDOR:**

**COVERED ENTITY**

The Doctor's Note  
290 Oak Grove Dr.  
Moscow, TN 38057  
Attn: Vicki Kennamore  
Fax: 901-877-1893

Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above.

- 5.7. Counterparts: Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- 5.8. Disputes. If any controversy, dispute, or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

**6. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE OF ARISING FROM ITS PERFORMANCE OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INDUCING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.**

**7. DEFINITIONS.**

- 7.1.1. Regulatory citations in this Agreement are to the United States Code of Federal Regulations ("C.F.R."), as promulgated April 14, 2001, interpreted and amended from time to time by HHS, for so long as such regulations are in effect.
- 7.1.2. Unless otherwise specified in this Agreement, all terms not otherwise defined shall have the meaning established for purposes of 45 C.F.R. parts 160 through 164, as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this business associate Agreement to be duly executed in its name and on its behalf of effective as of

**VENDOR**

By:

Print Name:

Print Title: Owner

Date:

**COVERED ENTITY**

By:

Print Name:

Print Title:

Date: