

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (“BAA”) is entered into as of _____ (“Effective Date”) by and between _____ (“Provider”) and American Academy of Sleep Medicine (“Business Associate” or “BA”). Provider and BA may each be referred to herein as a “Party” or collectively as the “Parties”. This BAA supersedes any previous BAA between the Parties.

1. **Background and Purpose.** In the course of inspecting Provider for accreditation purposes, BA may be given access to Protected Health Information (“PHI”). The parties have entered into this BAA to ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), codified at 45 C.F.R. Part 160 and Part 164, subparts A and C (the “Security Rule”), subparts A and D (the “Breach Notification Rule”), and subparts A and E (the “Privacy Rule”), all as applicable and as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and as clarified by any and all amendments, regulations, and guidance thereto (collectively, “the Rules”).
2. **Definitions.** Unless otherwise defined in this Agreement, all capitalized terms shall have the meanings ascribed to them in the Rules.
3. **Obligations of the Parties with Respect to PHI.**
 - 3.1. **Obligations of Business Associate.** With regard to its use and disclosure of PHI, BA agrees that:
 - a. It will not use or further disclose PHI other than as permitted or required by this BAA or as required by law.
 - b. It will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA.
 - c. It will report to Provider any use or disclosure of PHI in violation of this Agreement of which BA becomes aware.
 - d. It will ensure that any agents, including a subcontractor, to whom it provides PHI on behalf of Provider, agrees to the same restrictions and conditions that apply to the BA with respect to such information.
 - e. It will document any and all disclosures of PHI by BA or its agents, including subcontractors, as well as any other information related to such disclosures of PHI that would be required for Provider to respond to an Individual’s request for an accounting of disclosures in accordance with 45 C.F.R. 164.528 and will make such documentation and disclosure available to the Provider.

- f. It will, subject to any applicable privilege, following consultation with Provider, make available to the Secretary of the U.S. Department of Health and Human Services (“HHS”) any and all internal practices, books, and records of BA or its agents, including subcontractors, relating to the use and disclosure of PHI, for purposes of determining Provider’s compliance with the Privacy Rule.
- g. It will notify Provider of any and all requests by the Secretary of HHS for information prior to any release of information thereunder.
- h. It will, as required by the HITECH Act, comply with 45 C.F.R. 164.308, 164.310, 164.312, and 164.316 of the Security Rule.
- i. It will, as required by the HITECH Act, determine the Minimum Necessary PHI to be disclosed for uses, disclosures or requests of or for Provider’s PHI, other than those exempt from the Minimum Necessary requirement specified in 45 C.F.R. 164.502(b)(2), in order to accomplish the intended purpose of the use, disclosure, or request, consistent with the terms of the BAA. To the extent practicable and consistent with the terms of the BAA, the Minimum Necessary shall be the information contained in a Limited Data Set, as defined in 45 C.F.R. 164.514(e)(2).
- j. As required by the HITECH Act, effective not later than six (6) months after the date on which the Secretary publishes applicable final regulations, BA will not, directly or indirectly, receive remuneration in exchange for Provider’s PHI unless BA or Provider has obtained an authorization from the subject Individual(s), which complies with all applicable requirements, or otherwise permitted by the Rules. BA may not rely on any of the foregoing exceptions without advance notice to Provider describing the types of circumstances and the applicable exceptions to be relied upon by BA.

3.2. Permitted Uses and Disclosures of PHI by BA. Except as otherwise specified in this BAA, and to the extent permitted by the Rules, BA may make any and all uses and disclosures of PHI in its possession necessary to perform its obligations under the BAA and may: (a) use the PHI for its proper management and administration or to carry out its legal responsibilities; (b) disclose the PHI to a third party for the purpose of BA’s proper management and administration or to carry out the legal responsibilities of BA, provided that the disclosures are required by law or that BA has obtained reasonable assurances from the third party to whom PHI is to be disclosed that the PHI will be held confidentially and the third party has agreed to notify BA regarding any instances of which it becomes aware in which the confidentiality of the information has been breached; and (c) provide Data Aggregation services relating to the Health Care Operations of Provider as permitted by the Privacy Rule.

3.3. Obligations of Provider.

- a. Provider agrees to notify BA of any restrictions on uses and disclosures of PHI to which Provider agrees with any Individual that will impact in any manner the use and/or disclosure of that PHI by BA under this Agreement. The Parties acknowledge that the HITECH Act requires that Provider must comply with a restriction requested by an Individual if: (1) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which Provider has been paid out-of-pocket in full.
- b. Provider agrees to notify BA of any changes in, or revocation of, permission by an Individual to use or disclose PHI that will impact in any manner BA's permitted or required uses and/or disclosures of PHI under this BAA.
- c. Provider agrees to notify BA of any changes in its Privacy Practices that will impact in any manner the use and/or disclosure of PHI by BA under this BAA.
- d. Provider agrees to obtain any patient authorizations or consents that may be required under federal or state law in order to transmit PHI to BA and to enable BA to use and disclose PHI as contemplated by this BAA.
- e. If and to the extent that Provider's obligations under 45 C.F.R. 164.528 are amended by Section 13405 of Subtitle D of the HITECH Act (that is, if Provider is required to account for disclosures of PHI for treatment, payment and/or health care operations made through an electronic health record), Provider shall notify BA to maintain an appropriate record of disclosures.

3.4. Breach of Unsecured Protected Health Information. As required by the Breach Notification Rule, BA shall maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form. BA shall provide to Provider notice of a Breach of Unsecured PHI as soon as possible but not later than ten Business days after the first day the Breach is known. BA shall cooperate with Provider to determine whether the Breach "poses a significant risk of financial, reputational, or other harm to the individual," thereby requiring notice to individuals, and will cooperate with Provider as may be necessary to allow Provider to provide notification of the Breach to individuals as required by the Breach Notification Rule. Provider is responsible for the provision of notice to Individuals in a timely manner, provided that Provider shall consult with BA as needed regarding the details of the notice.

3.5. Effect of the Rules. To the extent that any relevant provision of the Rules is amended in a manner that materially changes the obligations of BA or Provider

under the terms of this BA, the Parties agree to amend this BA in order to give effect to such revised obligations. If the Parties cannot agree on an amendment to this BA, this BA may be terminated by either Party upon (30) days written notice to the other Party, or upon such shorter notice as may be required by applicable law.

4. **Term and Termination.**

- 4.1. This BAA shall terminate when Provider no longer uses BA to accredit the sleep center / laboratory facilities. Provider may terminate its relationship with BA if it determines that BA has violated a material term of this BAA. The rights and responsibilities of BA under this BAA shall survive termination.
- 4.2. Upon termination of its relationship with Provider, BA shall, if feasible, return or destroy all of the PHI that BA still maintains in any form, and shall retain no copies of such information. If such return or destruction is not feasible, BA shall extend the protections of this BAA to the PHI and shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

5. **Miscellaneous.**

- 5.1. Survival. The obligations imposed on BA pursuant to this BAA with respect to PHI and EPHI shall survive termination of this BAA and continue indefinitely solely with respect to PHI that BA or its agents, including subcontractors, retain in accordance with Section 4.2.
- 5.2. No Third Party Beneficiaries. Except as specifically set forth herein, nothing in this BAA shall confer upon any person other than the Parties any rights, remedies, obligations or liabilities whatsoever.
- 5.3. Privileges and Protections Not Waived. Nothing herein shall be construed as waiver of applicable legal or other privileges or protections held or enjoyed by either Party.
- 5.4. Amendment. This BAA shall not be amended except by the mutual written agreement of the Parties.
- 5.5. Assignment. Neither Party may assign any of its rights or obligations under this BAA without the prior written consent of the other Party.
- 5.6. Notice. Any notices required under this BAA shall be deemed effective on the third business day following transmission via First Class Mail or recognized national courier to the individuals listed on the signature page herein or such other addresses as the Parties subsequently may provide by notice.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be executed in its name and on its behalf by its duly authorized representative. By signing below, the Parties

acknowledge that they have read, understand, and agree to comply with the terms and conditions of this BAA.

PROVIDER

**AMERICAN ACADEMY OF SLEEP
MEDICINE**

By: _____

By: _____

Print Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

City, State, Zip: _____

City, State, Zip: _____

Date: _____

Date: _____

List the AASM Accredited Sleep Centers/Laboratories for which the agreement applies:

Mail agreements to:

Name: _____

Institution: _____

Address: _____

Phone # _____