

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into and effective as of the _____ day of _____, 20____ (“Effective Date”) by and between _____ [insert name of the Practice] (“Covered Entity”), and SomnoMed, Inc (“Business Associate”) (collectively, the “Parties”).

WITNESSETH WHEREAS, Covered Entity is a “covered entity” as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (“HIPAA”), and as described in the Health Information Technology for Economic and Clinical Health Act (“HITECH”) provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”); and WHEREAS, Business Associate provides medical billing services (the “Services”) for Covered Entity the performance of which involves exposure to certain Protected Health Information, as defined in 45 CFR 160.103 and limited to the information created or received by Business Associate from or on behalf of Covered Entity (“PHI”); and WHEREAS, HIPAA requires that Covered Entity enter into written agreements with its business associates in order to regulate the use and disclosure of certain protected health information of Covered Entity; and WHEREAS, Covered Entity and Business Associate agree to enter into this Agreement under the terms and conditions set forth herein to meet the applicable requirements for such business relationships under HIPAA.

NOW THEREFORE, for and in consideration of these premises, the Parties’ other mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged and confessed, the Parties hereto acknowledge, covenant, and agree as follows:

1. Obligations of Business Associate

1.1. Permitted Uses and Disclosures of PHI. Business Associate shall use and disclose any PHI it may receive from Covered Entity only to perform the Services and carry out the obligations of Business Associate under the Agreement, and in accordance with applicable federal and state laws, including but not limited to HIPAA. Business Associate may also use or disclose PHI for the proper management and administration of the Business Associate, for data aggregation services, or to carry out its legal responsibilities if such disclosure is required by law or if (i) the Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed, and (ii) the person or entity agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate shall not use or further disclose PHI other than permitted or required by this Agreement or as otherwise required by law.

1.2. Safeguards. Business Associate shall implement and use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and prevent the use or disclosure of PHI other than as set forth in this Agreement or as permitted or required by law. Business Associate agrees to notify Covered Entity in the event of any breach of unsecured PHI held by or under the control of Business Associate, including the identity of the affected individual(s) and all other relevant information, within three (3) business days of becoming aware of such breach. Unless the context of the relationship specifically requires otherwise, the parties disclaim any agency relationship between Covered Entity and Business Associate.

1.3. Reporting Disclosures of PHI. In the event Business Associate, its agents, employees or contractors use or disclose PHI in violation of this Agreement, Business Associate shall report such use or disclosure to Covered Entity as soon as Business Associate becomes aware of such violation, including the circumstances surrounding the use or disclosure and a description of the PHI inappropriately used or disclosed. Business Associate shall report to Covered Entity any security incident of which it becomes aware.

1.4. Mitigation of Harmful Effects. Business Associate shall establish procedures for mitigating harmful effects of any improper use or disclosure of PHI that Business Associate reports to Covered Entity.

1.5. Third Party Agreements. Business Associate shall require all of its subcontractors and agents that receive, use or have access to PHI under this Agreement to agree in writing to adhere to the same restrictions and conditions applicable to the use or disclosure of such PHI as required herein.

1.6. Access to Information. Within ten (10) business days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set (as defined in 45 C.F.R. 164.501) in Business Associate's possession, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained in the Designated Record Set by Business Associate. In the event any individual requests access to his or her own PHI directly from Business Associate, Business Associate shall forward such request for access to PHI Covered Entity upon receipt of same. Business Associate shall reasonably cooperate with Covered Entity to provide an individual, at Covered Entity's written direction, with access to the individual's PHI in Business Associate's possession within ten (10) business days of Business Associate's receipt of written instructions for same from Covered Entity. Any denials of access to PHI requested shall be the responsibility of Covered Entity.

1.7. Amendment of PHI. Business Associate agrees to make PHI in a Designated Record Set available for amendment and to incorporate any appropriate amendments at the direction of and in the time and manner designated by Covered Entity. Business Associate further agrees to forward any request for amendment of PHI made by an individual to Covered Entity upon receipt of such request, and take no action on such request until directed by Covered Entity.

1.8. Accounting of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and to provide Covered Entity with an accounting of such disclosures in the time and manner designated by Covered Entity. Business Associate further agrees to forward any request for an accounting of disclosures of PHI made by an individual to Covered Entity upon receipt of such request. To the extent Business Associate maintains PHI in an electronic health record, Business Associate agrees to account for all disclosures of such PHI upon the request of an individual for a period of at least three (3) years prior to such request (but no earlier than the effective date of this Agreement), as required by HITECH; such accounting shall be directly to the individual if requested by Covered Entity.

1.9. Access to Books and Records. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the requirements of HIPAA.

1.10. Obligations under ARRA. Business Associate acknowledges that it is subject to the security and data breach provisions of HIPAA and agrees to abide thereby. Business Associate also agrees to abide by all of the privacy provisions set forth in Title XIII, Subtitle D of ARRA, including without limitation restrictions on marketing and requirements relating to limited data sets and minimum necessary disclosures.

2. Obligations of Covered Entity

2.1. Notice of Privacy Practices. Covered Entity agrees to provide Business Associate with a copy of Covered Entity's "Notice of Privacy Practices," required to be provided to individuals in accordance with 45 CFR 164.520, as well as any subsequent changes to such notice.

2.2. Changes to or Restrictions on Use or Disclosure of PHI. Covered Entity will provide Business Associate with any changes to, or revocation of, permission to use or disclose PHI if such changes affect Business Associate's permitted or required uses or disclosures. Covered Entity will further notify Business Associate of any restriction to the use or disclosure of PHI agreed to by Covered Entity in accordance with the provisions of 45 CFR 164.522, and any restriction requested

by an individual which Covered Entity is required to comply with in accordance with the provisions of HITECH.

2.3. Requested Uses or Disclosures of PHI. Covered Entity shall not request Business Associate to use or disclose PHI in any manner inconsistent with state or federal law.

3. Term and Termination

3.1. Term. This Agreement shall be deemed effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless otherwise terminated under the terms and conditions set forth herein.

3.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, its agents or subcontractors, this Agreement and any underlying services agreement may be immediately terminated by Covered Entity, as provided under 45 CFR 164.504(e)(2)(iii). At its option, Covered Entity may choose to (i) provide Business Associate with written notice of the existence of a material breach of this Agreement; and (ii) permit Business Associate to cure the material breach upon mutually agreeable terms. In the event Business Associate is afforded an opportunity and fails to cure the breach in accordance with such mutually agreeable terms, this Agreement and any underlying services agreement may be immediately terminated at the option of Covered Entity. In the event Covered Entity violates its obligations under HIPAA in a manner related to this Agreement, Business Associate shall provide Covered Entity with notice of such breach; if Covered Entity does not cure such breach within a reasonable period of time, Business Associate may terminate this Agreement.

3.3. Effect of Termination. Upon termination of this Agreement, Business Associate shall return or destroy all PHI created or received by Business Associate, its agents and subcontractors to the extent feasible, without retaining any copies of such PHI. If Business Associate and Covered Entity mutually agree that return or destruction of the PHI is not reasonably feasible, Business Associate agrees to extend the protections of PHI under this Agreement and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible.

4. Miscellaneous Provisions

4.1. Definitions and Interpretation; Indemnification. All words used herein but not defined herein shall have the meanings set out in HIPAA, and this Agreement shall be interpreted in such a fashion as to cause the parties to be in compliance with HIPAA.

4.2. Assignment. Neither party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other party, and any such attempted assignment shall be void.

4.3. Amendment. This Agreement shall not be modified or amended except by a written document executed by each of the parties to this Agreement, and such written modification or amendment shall be attached hereto.

4.4. Waiver of Provisions. Any waiver of any terms and conditions of this Agreement must be in writing, and signed by both Business Associate and Covered Entity. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions of the Agreement.

4.5. Parties In Interest; No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and permitted assigns of the parties to this Agreement. Neither this Agreement nor any other agreement contemplated in this Agreement shall be deemed to confer upon any person not a party to this Agreement any rights or remedies contained in this Agreement.

4.6. Governing Law. This Agreement, the rights and obligations of the parties hereto, and the entire relationship between the parties relating hereto shall be governed by and construed and enforced in accordance with the substantive laws (but not the rules governing conflicts of laws) of the state of Texas and with HIPAA.

4.7. Notice. Whenever this Agreement requires or permits any notice, request, or demand from one party to another, the notice, request, or demand must be in writing to be effective and shall be deemed to be delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom notice is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party, at the address of such party set forth below (or at such other address as such party may designate by written notice to all other parties in accordance herewith):

If to Covered Entity:

_____ [insert name of Covered Entity]

Attn: Privacy Officer

_____ [insert street address]

_____ [insert city, state, zip code]

If to Business Associate:

SomnoMed, Inc.
Billing Services Division
7460 Warren Parkway, Suite 190
Frisco, TX 75034-4169

4.8. Authorization. The Parties executing this Agreement hereby warrant that they have the authority to execute this Agreement and that their execution of this Agreement does not violate any bylaws, rules, or regulations applicable to them.

4.9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

SomnoMed, Inc.

By: Stephanie Wolff

_____ [Stephanie Wolff]

Its: VP of Finance

Date: _____

_____ [Covered Entity Name]

By: _____ [printed name of authorized signer]

_____ [signature of authorized signer]

Its: _____ [title of authorized signer]

Date: _____
