

HIPAA Business Associate Agreement

This **HIPAA BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") between _____ ("Business Associate") and **SOUND INPATIENT PHYSICIANS, INC.** ("Covered Entity") is made on this ___ day of _____, 20__ (the "Effective Date").

WHEREAS, Business Associate and Covered Entity have a business arrangement under which Business Associate provides [**INSERT DESCRIPTION OF TYPE OF SERVICES**] (the "Services") to Covered Entity;

WHEREAS, the Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, the standards relating to Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and D, and the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and D, as such regulations may be amended from time to time (including, without limitation, any amendments required by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") (collectively "HIPAA Regulations"); and

WHEREAS, the parties desire to comply with the HIPAA Regulations, which require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information (as defined below), and prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein contained, Covered Entity and Business Associate agree as follows:

1. **Definitions.**

1.1. "Protected Health Information" or "PHI" means information, including demographic information, that (i) relates to the past, present, or future physical or mental health or condition of an Individual, the provision of health care to an Individual, or the past, present, or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or provides a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, is created by Business Associate on behalf of Covered Entity, or is made accessible to Business Associate by Covered Entity.

1.2. Except as otherwise set forth in this Agreement, capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations.

2. **Confidentiality Obligation.** Business Associate will not Use or Disclose PHI other than as permitted by this Agreement or as Required By Law.

3. **Permitted Uses of PHI.** Business Associate shall Use PHI only as necessary to perform the Services, for Business Associate's proper management and administration, or to carry out Business Associate's legal responsibilities.

4. **Permitted Disclosures of PHI.** Business Associate shall Disclose PHI only:

- 4.1. As necessary to perform the Services;
 - 4.2. For Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities, provided that:
 - 4.2.1. The Disclosure is Required By Law; or
 - 4.2.2. Prior to the Disclosure, Business Associate obtains reasonable assurances from the person or entity to whom the PHI is Disclosed that:
 - (a) the PHI will be held in confidence and used or further Disclosed only as Required By Law or for the lawful purpose for which it was Disclosed to the person or entity; and
 - (b) the person or entity will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
5. **Safeguards.**
- 5.1. Business Associate shall protect PHI from any improper oral or written disclosure by enacting and enforcing safeguards to maintain the security of and to prevent any Use or Disclosure of PHI other than is permitted by this Agreement.
 - 5.2. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. In addition, as of the date required by the HITECH Act, Business Associate shall ensure that it complies with the standards and implementation specifications with respect to administrative, physical and technical safeguards and policy and procedure and documentation requirements contained in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316, respectively.
6. **Access and Amendment.** Business Associate shall make the PHI specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access in accordance with 45 C.F.R. § 164.524. If Covered Entity determines that an Individual is entitled to such access, and that such PHI is under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide access to such PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request to access his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days. In addition, Business Associate shall make PHI available to Covered Entity for the purpose of amendment and incorporate changes or amendments to PHI when notified to do so by Covered Entity. Business Associate shall provide such access and incorporate such amendments within the time and in the manner reasonably specified by Covered Entity.
7. **Accounting.**
- 7.1. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of PHI made by Business Associate or its employees, agents, representatives or subcontractors other than disclosures that (i) are made directly to the Individual who is the subject of the PHI; (ii) are made pursuant to an Individual's

Authorization; or (iii) are made for the purposes of Covered Entity's Treatment, Payment, or Health Care Operations, except as set forth in Section 7.2 below.

- 7.2. In the event Covered Entity uses or maintains an Electronic Health Record (as defined by the HITECH Act) with respect to PHI and Business Associate makes Disclosures of PHI through such Electronic Health Record for Covered Entity's Treatment, Payment and/or Health Care Operations purposes while performing the Services, as of the date required by HITECH Act, Business Associate will be required to provide an accounting of any Disclosures made through such Electronic Health Record that Covered Entity has determined are for Covered Entity's Treatment, Payment and/or Health Care Operations purposes in the event an Individual makes a request for such an accounting directly to Business Associate. Such accounting shall be made in accordance with regulations promulgated by the Secretary.
- 7.3. An accounting provided pursuant to Section 7.1 above shall include the following information:
 - 7.3.1. the Disclosure date;
 - 7.3.2. the name and (if known) address of the person or entity to whom Business Associate made the Disclosure;
 - 7.3.3. a brief description of the PHI Disclosed; and
 - 7.3.4. a brief statement of the purpose of the Disclosure that reasonably sets forth the legal basis for the Disclosure.
- 7.4. Business Associate must maintain the Disclosure information required for an accounting under Section 7.2 for a period of three (3) years from the date of the Disclosure. Business Associate must maintain the Disclosure information required by Section 7.3 above for the six (6) years preceding Covered Entity's request for such information; provided, however, that Business Associate shall not be required to have such information available for Disclosures that occurred prior to April 14, 2003.
8. **Access to Books and Records.** Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI pursuant to this Agreement available to the Secretary for purposes of determining compliance with the HIPAA Regulations.
9. **Agents and Subcontractors.** Business Associate shall require all subcontractors and agents to which it provides PHI to agree to all of the same restrictions and conditions concerning such PHI to which Business Associate is bound in this Agreement.
10. **Reporting of Violations.** Business Associate shall report to Covered Entity within five (5) business days of its discovery of:
 - 10.1. any Use or Disclosure of PHI not authorized by this Agreement;
 - 10.2. any Security Incident; and/or
 - 10.3. any Breach of Unsecured Protected Health Information, to the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or

discloses Unsecured Protected Health Information. Such report shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Breach. As soon as possible thereafter, and to the extent known, Business Associate shall also provide Covered Entity with a description of

10.3.1. What happened, including the date of the Breach and the date of the discovery,

10.3.2. The types of Unsecured Protected Health Information involved in the Breach,

10.3.3. Any steps Individuals should take to protect themselves from potential harm from the Breach, and

10.3.4. What Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches.

11. **No Remuneration for PHI.** Business Associate shall not receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by § 13405(d) of the HITECH Act or any regulations adopted as a result of that provision.

12. **Restrictions on Disclosures.** Upon request by an Individual, Covered Entity shall determine whether an Individual is entitled to a restriction on disclosure of PHI pursuant to 45 C.F.R. § 164.522. If Covered Entity determines that an Individual is entitled to such a restriction, Covered Entity will communicate the decision to Business Associate. Business Associate will restrict its disclosures of the Individual's PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request for restrictions, Business Associate shall forward such request to Covered Entity within five (5) business days. This Section shall be effective on and after Section 13405(a) of the HITECH Act becomes effective.

13. **Term and Termination.**

13.1. *Term.* This Agreement begins on the Effective Date and remains in effect until the business relationship between the parties ends and Business Associate ceases to perform the Services for Covered Entity.

13.2. *Termination.* This Agreement may be terminated by Covered Entity in the event that Covered Entity determines that Business Associate has violated a material term of this Agreement and such violation has not been remedied within 10 days following written notice to the Business Associate.

13.3. *Survival.* Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations and warranties, express and implied, shall survive the termination or expiration of this Agreement, and shall remain in effect and binding upon the parties until they have fulfilled all of their obligations hereunder and the statute of limitations shall not commence to run until the time such obligations have been fulfilled. Any terms of this Agreement that must survive the expiration or termination of this Agreement in order to have their intended effect, shall survive the expiration or termination of this Agreement whether or not expressly stated.

13.4. *Duties Upon Termination.* Upon termination of this Agreement, Business Associate shall either return or destroy all PHI in the possession or control of Business Associate or its

agents and subcontractors. However, if Covered Entity determines that neither return nor destruction of PHI is feasible, Business Associate may retain PHI provided that it extends the protections of this Agreement to the information and limits further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

14. **Indemnity.** Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach of this Agreement by Business Associate.
15. **No Third Party Beneficiaries.** This Agreement, is for the sole benefit of the parties, and there are no third party beneficiaries to the Agreement.
16. **Incorporation of HITECH Act Provisions; Future Amendments to HIPAA or Privacy and Security Regulations.** Covered Entity and Business Associate agree that it is their intention to comply with the privacy and security provisions contained in the HITECH Act and to incorporate into this Agreement the additional privacy and security requirements of the HITECH Act that are made applicable to Business Associate under the HITECH Act. Furthermore, to the extent that HIPAA and/or the HIPAA Regulations are amended in the future and to the extent that such amendments contain requirements and/or provisions not already contained in this Agreement that are required to be incorporated into this Agreement, the parties agree that either (i) this Agreement shall be deemed to be automatically amended to the extent necessary to incorporate such additional requirements and/or provisions, or (ii) if determined necessary by Covered Entity, they will enter into an amendment to this Agreement in order to incorporate any such additional requirements and/or provisions.
17. **No Waiver.** This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.
18. **No Assignment.** Covered Entity has entered into this Agreement in specific reliance on the expertise and qualifications of Business Associate. Consequently, Business Associate's duties under this Agreement may not be transferred, assigned or assumed by any other person, in whole or in part, without the prior written consent of the Covered Entity. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
19. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused their authorized representatives to execute this Business Associate Agreement effective as of the day and date first above written.

BUSINESS ASSOCIATE:

By: _____

Title: _____

COVERED ENTITY:

[**SOUND INPATIENT PHYSICIANS, INC.**]

By: _____

Title: _____