

## **BUSINESS ASSOCIATE CONTRACT**

This Business Associate Contract (“this Contract”) is entered into by and between \_\_\_\_\_ (Covered Entity”) and Southern Prosthetic Supply, Inc. (“Business Associate”), effective as of \_\_\_\_\_, 2006 (“the Effective Date”).

### **RECITALS**

**WHEREAS**, Business Associate provides certain services (“the Services”) for or on behalf of Covered Entity;

**WHEREAS**, Business Associate receives, has access to, or creates protected health information (“PHI”) (defined below), in order to provide the Services;

**WHEREAS**, Covered Entity and Business Associate want to protect the privacy and security of the PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity when providing the Services, in compliance with the applicable requirements of the Privacy Rule (defined below), the Security Rule (defined below) and other applicable laws; and

**WHEREAS**, the Privacy and Security Rules require Covered Entity and Business Associate to enter into a written contract containing satisfactory assurances that the Business Associate will appropriately safeguard such PHI;

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows.

### **I. DEFINITIONS**

In addition to the definitions stated elsewhere in this Contract, the following terms shall have the meaning set forth below. Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms have in the Privacy and Security Rules.

- 1.1 Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR 164.501.
- 1.2 Electronic Media. “Electronic Media” shall have the same meaning as the term “electronic media” in 45 CFR 160.103.
- 1.3 Electronic Protected Health Information. “Electronic Protected Health Information” shall have the meaning as the term “electronic protected health information” in 45 CFR 160.103.

- 1.4 Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.5 Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.6 Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.7 Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- 1.8 Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.9 Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
- 1.10 Security Rule. "Security Rule" shall mean the Security Standards at 45 CFR parts 160 and 164, subparts A and C.

## **II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- 2.1 Limitation on Use or Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Contract or as Required by Law.
- 2.2 Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Contract. Business Associate further agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- 2.3 Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Contract.
- 2.4 Reports. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Contract of which it becomes

aware. Business Associate further agrees to report to Covered Entity any Security Incident of which it becomes aware.

- 2.5 Agents/Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Contract to Business Associate with respect to such information. Business Associate further agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.
- 2.6 Access to PHI. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity and in the time and manner specified by Covered Entity, to the PHI in such Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the access requirements under 45 CFR 164.524.
- 2.7 Amendments to PHI. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to the PHI in such Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, at the request of Covered Entity or an Individual, and in the time and manner specified by Covered Entity.
- 2.8 Availability of Books and Records. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner specified by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 2.9 Documentation of Disclosures. Business Associate agrees to document such 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.
- 2.10 Accounting of Disclosures. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner specified by Covered Entity, information collected in accordance with Section 2.9 of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

### **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- 3.1 General Use and Disclosure Provisions. Except as otherwise limited in this Contract, Business Associate may use or disclose PHI solely as necessary to perform the Services for or on behalf of Covered Entity, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.
- 3.2 Specific Use and Disclosure Provisions.
- (a) Except as otherwise limited in this Contract, Business Associate may use PHI 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 Contract, Business Associate may disclose PHI 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) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

### **IV. OBLIGATIONS OF COVERED ENTITY**

- 4.1 Provisions for Covered Entity To Inform Business Associate of Privacy Practices and Restrictions.
- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
  - (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with

45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- 4.2 Permissible Requests by Covered Entity. Except as may be set forth in Section 3.2 above, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## V. TERM AND TERMINATION

- 5.1 Term. The term of this Contract shall commence on the Effective Date, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the provisions set forth in this Article V.
- 5.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Contract by Business Associate, Covered Entity shall either:
- (a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Contract and the Services if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - (b) Immediately terminate this Contract and the Services if Business Associate has breached a material term of this Contract and cure is not possible; or
  - (c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- 5.3 Termination of the Services. Notwithstanding any other provision of this Contract, this Contract shall terminate automatically if the Business Associate ceases to perform the Services.
- 5.4 Effect of Termination.
- (a) Except as provided in Section 5.4(b) of this Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **VI. GENERAL PROVISIONS**

- 6.1 Regulatory References. A reference in this Contract to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended.
- 6.2 Amendment. The parties agree to take such action as is necessary to amend this Contract from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191. All amendments to this Contract shall be in writing and signed by both parties.
- 6.3 Survival. The respective rights and obligations of Business Associate under Section 5.4 of this Contract shall survive the termination of this Contract.
- 6.4 Interpretation. Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- 6.5 Assignment. Business Associate may not assign its rights, nor may it delegate its duties, under this Contract without the prior written consent of the Covered Entity.
- 6.6 No Third Party Rights. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that nothing in this Contract is intended, nor shall it be construed, to confer upon any person or entity other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- 6.7 Waiver. Any waiver of any provision of this Contract shall be in writing and signed by the party against whom it is sought to be enforced. Any such waiver shall not operate or be construed as a waiver of any other provision of this Contract or a future waiver of the same provision.
- 6.8 Applicable Law. The validity, enforceability and interpretation of Contract shall be governed by the laws of the State of Maryland, without giving effect to any conflict-of-laws principles, and by the Privacy and Security Rules.

- 6.9 Entire Contract. This Contract constitutes the entire agreement between the parties, and supersedes all other agreements, express or implied, oral or written, between the parties related to the subject matter of this Contract.
- 6.10 Headings. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
- 6.11 Severability. The provisions of this Contract shall be severable, and if any provision shall be determined to be invalid, void or unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 6.12 Counterparts. This Contract may be executed in separate counterparts, none of which need contain the signatures of both parties, and each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument.
- 6.13 Notice. Any notices or other communications required to be given under this Contract shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, to the individuals at the addresses indicated below or to such other person or address as a party may designate by written notice to the other party. Notice shall be deemed effective upon receipt.
- 6.14 Independent Contractors. The parties to this Contract are independent contractors. None of the provisions of this Contract are intended to create, nor shall they be interpreted or construed to create, any relationship between Covered Entity and Business Associate other than that of independent contractors. Except as otherwise expressly set forth herein, neither party hereto, nor any of its representatives, shall be deemed to be the agent, employee or representative of the other party.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the dates indicated below.

**COVERED ENTITY:**

Name:  
Address:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**

**Southern Prosthetic Supply, Inc.**

By:  
Name: Ron May  
Title: President & C.O.O.

Date: 10/15/2007

\_\_\_\_\_  
Signature