

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into as of \_\_\_\_\_ ("Effective Date") is an addendum to the Practice Sense Terms of Service available at <https://practicesense.com/terms-of-service> by and between ("you", "your" or "Covered Entity") and Practice Sense, Inc. ("we", "Practice Sense" or "Business Associate") or other agreement between you and Practice Sense governing your use of Services (collectively, the "Agreement") in place as of the Effective Date between you and Practice Sense. The parties hereby agree as follows:

- 1. Applicability; Scope.** This Agreement sets forth the terms and conditions that govern your disclosure of Content containing Protected Health Information to Practice Sense and its subsidiaries and affiliates. This Agreement is not intended to otherwise amend, modify, or alter the rights, duties, and obligations of the parties under any other agreements between them. This Agreement also is not intended, to the full extent of applicable laws, rules and regulations, to grant any rights to any person or entity who is not a party to this Agreement. This Agreement only applies to the extent Business Associate is deemed a business associate to Covered Entity under the Privacy Rule or the Security Rule.
- 2. Definitions.** This BAA applies only to paid Practice Sense Accounts for Services that are designated as HIPAA Accounts. You acknowledge that this BAA does not apply to any other accounts you may have now or in the future, and that any of your accounts that do not satisfy all of the HIPAA Account requirements are not subject to this BAA. Unless otherwise expressly defined in this BAA, all Capitalized terms in this BAA will have the meanings set forth in the Agreement or in HIPAA, as defined herein.

  - a. "Administrative Safeguards" means administrative actions and policies and procedures used to manage the selection, development, implementation, and maintenance of security measures to protect electronic Protected Health Information and to manage the conduct of the Business Associate's workforce in relation to the protection of that information, as more particularly set forth in 45 C.F.R. §164.308.
  - b. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information not permitted by HIPAA which compromises the security or privacy of Protected Health Information as stated in 45 C.F.R. §164.402.

- c. "Business Associate" means a person or entity that performs functions on behalf of the Covered Entity which meet the definitions of "Business Associate Activities" in 45 C.F.R. §160.103. In order for Business Associate to perform its obligations, Covered Entity must disclose certain Protected Health Information that is subject to protection under HIPAA.
- d. "Electronic PHI" means PHI that is transmitted by or maintained in electronic media, limited to the information received by Business Associate from or on behalf of Covered Entity.
- e. "HIPAA" means the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, as amended, by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations.
- f. "HIPAA Account" means a paid account for Practice Sense Services in which you have indicated that to us that you intend to provide Content containing PHI.
- g. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules as found at 45 CFR Part 160 and Part 164, as amended from time to time.
- h. h) "Individual" means "individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- i. "Physical Safeguards" means the physical measures, policies and procedures used to protect Business Associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion, as more particularly set forth in 45 C.F.R. §164.310.
- j. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 184, subparts A, D and E.
- k. "Protected Health Information" or "PHI" means Individually Identifiable Health Information, as defined in 45 CFT 160.103, that is transmitted in any

medium that identifies an individual or creates a reasonable basis to believe the information can be used to identify an individual and relates to (i) the past, present or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present or future payment for the provision of health care to an individual. Protected Health Information is limited to that information received by Practice Sense from or on behalf of Covered Entity.

- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- m. "Secretary" means the Secretary of the U.S. Department of Health and Human Services or his designee.
- n. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system containing Covered Entity's Protected Health Information, pursuant to 45 C.F.R. §164.304.
- o. "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subparts A and C.
- p. "Technical Safeguards" means the technology and the policy and procedures for its use that protect electronic Protected Health Information and control access to it, as more particularly set forth in 45 C.F.R. §164.312.
- q. "Unsecured Protected Health Information" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary, as stated in 45 C.F.R. §164.402.

### **3. Permitted and Required Uses and Disclosures.**

- a. Service Offerings. Practice Sense may Use or Disclose PHI, in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), for or on behalf of Covered Entity as specified in the Agreement, provided that such Use or

Disclosure would not violate the Privacy Rule, the Security Rule, or HIPAA if done by Covered Entity.

- b. Administration and Management of Services. Practice Sense may Use and Disclose PHI as necessary for the proper management and administration of Services, provided that the Disclosures are either Required by Law or Practice Sense obtains reasonable assurances from the recipient of the PHI that: (i) the recipient will hold the PHI confidentially and will Use or Disclose the PHI only as required by law or for the purpose for which it was disclosed to the recipient, and (ii) the recipient will notify Practice Sense of any instances of which it is aware in which the confidentiality of information containing PHI information has been Breached.
- c. Additional Uses and Disclosures. Unless otherwise prohibited Practice Sense may Use or Disclose PHI to:
  - (i) provide Data Aggregation services, if requested, to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B);
  - ii) report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(1); and
  - (iii) make the disclosures for public health activities permitted of a person subject to the jurisdiction of the Food and Drug Administration described in 45 CFR §164.512(b)(l)(iii).
- d. Provisions of Covered Entity to notify Business Associate of privacy practices and restrictions.
  - 1. 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 Protected Health Information.
  - 2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information 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 Protected Health Information.

#### **4. Obligations of Practice Sense.**

- a. Practice Sense Obligations Conditioned. For any of your Accounts that are not HIPAA Accounts, Practice Sense does not act as a business associate under HIPAA and will have no obligations under this BAA.
- b. Limit on Uses and Disclosures. Practice Sense will Use or Disclose PHI only as permitted by this BAA or as Required by Law, provided that any such use or disclosure would not violate HIPAA if done by a Covered Entity, unless permitted under HIPAA for a Business Associate.
- c. Security and Safeguards. Practice Sense will use reasonable and appropriate safeguards to prevent Use or Disclosure of the PHI other than as provided for by this BAA, consistent with the requirements of Subpart C of 45 C.F.R. Part 164 (with respect to Electronic PHI) as determined by Practice Sense and as reflected in the Agreement.
- d. Reporting. For all reporting obligations under this BAA, the parties acknowledge that, because Practice Sense does not know the nature of PHI contained in any of your Content, it will not be possible for Practice Sense to provide information about identities of Individuals who may have been affected or a description of the type of information that may have been subject to a Security Incident, an Impermissible Use or Disclosure, or a Breach.
- e. Reporting of Impermissible Uses and Disclosures; Security Incidents. Practice Sense will report to you: (i) any Use or Disclosure of PHI not permitted or required by this BAA of which Practice Sense becomes aware; (ii) at least once each calendar quarter, of any Security Incidents involving PHI of which Practice Sense becomes aware in which there is a successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System in a manner

that risks the confidentiality, integrity or availability of such information. No further notice will be provided, and notice is hereby deemed provided, for unsuccessful attempts at unauthorized access, use, disclosure, modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful login attempts, or interception of encrypted information where the key is not compromised, or any combination of the above.

- f. Reporting of Breaches. Practice Sense will report to you any Breach of your Unsecured PHI that Practice Sense may discover to the extent required by 45 C.F.R. § 164.410. Practice Sense will make such report without unreasonable delay, and in no case later than 60 calendar days after discovery of such Breach
- g. Subcontractors. Practice Sense will ensure that any subcontractors who receive, maintain or transmit PHI on behalf of Practice Sense agree to restrictions and conditions at least as stringent as those found in this BAA, and agree to implement reasonable and appropriate safeguards to protect PHI.
- h. Access to PHI; Amendment. Practice Sense will make PHI in a Designated Record Set available to you: (i) so that you can comply with 45 C.F.R. § 164.524.3.7; (ii) for amendment and incorporate any amendments to the PHI, as may reasonably be requested by you in accordance with 45 C.F.R. § 164.526.3.8.
- i. Accounting of Disclosures. Practice Sense will make available to you information as required to provide an accounting of Disclosures in accordance with 45 C.F.R. § 164.528 of which Practice Sense is aware, if requested by you. As Practice Sense cannot readily identify which Individuals are identified or what types of PHI are included in your Content, you acknowledge and agree that you will be solely responsible for identifying which Individuals, if any, may have been included in your Content which Practice Sense has disclosed and for providing a brief description of the PHI disclosed.
- j. Internal Records and HHS. Practice Sense will make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services ("HHS") for

purposes of determining your compliance with HIPAA. Nothing in this section will waive any applicable protection or privilege, including with respect to trade secrets and confidential commercial information.

**5. HIPAA Security Rule Requirements. Practice Sense agrees to:**

- A. Implement and document, as set forth in 45 C.F.R. § 164.316. Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it receives, maintains, or transmits on behalf of the Covered Entity, as required by 46 C.F.R. Part 164, Subpart C, and specifically, but not exclusively, including the following:
  - I. Ensure the confidentiality, integrity, and availability of all electronic Protected Health Information Practice Sense receives, maintains, or transmits on behalf of Covered Entity;
  - II. Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;
  - III. Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under the HIPAA Privacy Rule, HIPAA Security Rule; and
  - IV. Ensure compliance with these sections by its workforce.

**6. Obligations of Covered Entity.**

- A. Identification of HIPAA Accounts. Each account that you intend to be applicable to this BAA that contain PHI have been identified by you to Practice Sense.
- B. Appropriate Configurations. You are solely responsible for configuring, and will configure, all accounts identified under to Practice Sense as HIPAA Accounts, as follows:
  - I. Any Necessary Consents. You warrant that you have obtained any necessary authorizations, consents, and other permissions that may be required under applicable law prior to placing Content, including

without limitation Content containing PHI, on the Practice Sense Network.

- II. Restrictions on Disclosures. You will not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause Practice Sense to violate this BAA or any applicable law.
- III. Compliance with HIPAA. You will not request or cause Practice Sense to make a Use or Disclosure of PHI in a manner that does not comply with HIPAA or this BAA.

## **7. Term and Termination**

- a. *Term.* The term of this BAA will commence on the BAA Effective Date and will remain in effect with respect to each account that you identify as being subject to this BAA until the earlier of the termination of the Agreement or notification by you that an account is no longer subject to this BAA.
- b. *Termination.* Either party has the right to terminate this BAA for any reason upon 30 days prior written notice to the other party. A material breach of this BAA will be treated as a material breach of the Agreement. This BAA shall also terminate if all of the PHI provided by Covered Entity to Practice Sense, or received by Practice Sense 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 termination provisions in this Section.
- c. *Effect of Termination.* Unless it is not feasible to do so, upon termination of this BAA for any reason, Practice Sense shall return to Covered Entity or destroy all PHI received from Covered Entity, or received by Practice Sense on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Practice Sense. The parties acknowledge that it may not be feasible for Practice Sense to destroy or return PHI upon termination of this BAA. If Practice Sense determines that returning or destroying the PHI is not feasible, Practice Sense shall notify Covered Entity of the conditions that make return or destruction infeasible



and shall extend the protections of this Agreement 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 Practice Sense maintains such PHI. The rights and obligations of Practice Sense under this paragraph shall survive the termination of this Agreement.

- 8. No Agency Relationship.** As set forth in the Agreement, nothing in this BAA is intended to make either party an agent of the other. Nothing in this BAA is intended to confer upon you the right or authority to control Practice Sense's conduct in the course of Practice Sense complying with the Agreement and BAA.
9. Ownership of PHI. The Protected Health Information to which Practice Sense, or any agent or subcontractor of Practice Sense has access under this Agreement shall be and remain the property of Covered Entity.
10. Notice Regarding Compelled Disclosure. If Practice Sense is requested pursuant to, or believes it is Required by Law to disclose any PHI, Practice Sense will provide Covered Entity with prompt written notice of such request(s) to enable Covered Entity to seek a protective order or to pursue other procedures challenging the attempt to compel disclosure. Practice Sense will cooperate with Covered Entity in its efforts to challenge such compelled disclosure.
11. Entire Agreement; Conflict. Except as amended by this BAA, the Agreement will remain in full force and effect. This BAA, together with the Agreement as amended by this BAA: (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement; and (b) supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the subject matter hereof. If there is a conflict between the Agreement, this BAA or any other amendment or BAA to the Agreement or this BAA, the document later in time will prevail.
12. Nondisclosure. You agree that the terms of this BAA are not publicly known and constitute Practice Sense Confidential Information under the Agreement.
13. Counterparts and Facsimile Delivery. This BAA may be executed in two or more counterparts, each of which will be deemed an original and all of which taken

together will be deemed to constitute one and the same document. The parties may sign and deliver this BAA by facsimile transmission.

IN WITNESS WHEREOF, the parties have executed this BAA as of the BAA Effective Date.

Practice Sense, Inc.

Name: *Francis Geraci*

Title: President, Practice Sense, Inc.

Name:

Title:

Date Signed: