

## Sample Contract Clauses

The following examples of contract language may serve as starting points when drafting provisions involving relatively common healthcare exposures. Note that every organization must examine the specific implications of such provisions and consult with legal counsel regarding their usage.

### ANTI-KICKBACK PROTECTION

If [vendor] provides any “discount or other reduction in price” as referred to under Section 1128B(b)(3)(A) of the Social Security Act 42 U.S.C. § 1320a-7b(b)(3)(A), it shall disclose the discount or reduction in price on its invoice to Healthcare Business, and Healthcare Business agrees to disclose that discount or reduction in price under any state or federal program that provides cost- or charge-based reimbursement to Healthcare Business for services and products covered by this Agreement.

### CONFIDENTIALITY OF PATIENT INFORMATION

[Vendor] acknowledges that patient medical information is confidential and protected by state and federal law. [Vendor] shall not disclose patient-identifiable information to any third party, and shall use patient-identifiable information only to the extent necessary to perform the services specified under this Agreement.

[Vendor] shall be liable for any misuse, misappropriation, disclosure or other breach of the private nature of patient-identifiable information arising out of [vendor’s] performance under this Agreement.

### CORPORATE COMPLIANCE

[Vendor] understands that the Healthcare Business has adopted a Corporate Compliance Program and is committed to complying with all applicable laws, rules and regulations. Accordingly, [vendor] shall comply with all laws, rules and regulations concerning the services or items furnished to the Healthcare Business under this Agreement.

In addition, [vendor] shall bring to the attention of the Healthcare Business’s Compliance Officer, or a designee, any alleged improper practices [vendor] may discover in association with this Agreement, so that the Compliance Officer may take appropriate action.

### MUTUAL INDEMNIFICATION

Each party shall indemnify and hold the other – its officers, employees and agents – harmless from any and all liability and damages, costs and expenses, including reasonable attorney’s fees and costs, which the other or its officers, employees or agents become obligated to pay due to the negligent or intentional acts or omissions of the party or any of its personnel arising out of its duties and obligations under this Agreement, provided that no indemnification will be required to the extent it would result in the loss of available coverage under the liability insurance maintained by either party. This provision shall survive the termination of this Agreement.

### PROPRIETARY INFORMATION

All information about the Healthcare Business furnished to or obtained by [vendor] in connection with the performance of its duties hereunder, including information about the Healthcare Business incorporated into [vendor’s] documents, is “Proprietary Information.” Proprietary Information does not include information that (a) is generally available to the public; or (b) was available to [vendor] on a non-confidential basis prior to its disclosure by the Healthcare Business Except to the extent permitted by this Agreement, or as required by applicable law, [vendor] agrees (a) to keep all Proprietary Information confidential; and (b) to take reasonable steps to safeguard and protect the Proprietary Information. [Vendor] shall not disclose any Proprietary Information to any third party unless the third party has a need to know such Proprietary Information to fulfill [vendor’s] obligations hereunder. [Vendor] will cause its subcontractors, agents and other representatives to observe the terms of this agreement. In the event that [vendor] is required by applicable law to disclose any Proprietary Information, [vendor] shall provide the Healthcare Business with prompt notice of such request.

Source: “Suggestions and Checklist for Review of Hospital Contracts.”



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