

**BUSINESS ASSOCIATE AGREEMENT
REGARDING PROTECTED HEALTH INFORMATION**

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into as of _____, 201_, by and between _____ with an office at _____ (the "Business Associate"), and _____ with an office at _____ (the "Covered Entity").

RECITALS:

WHEREAS, the Business Associate and the Covered Entity have entered into _____ dated _____, _____ (the "Agreement") wherein the Business Associate may create, receive, maintain or transmit Protected Health Information ("PHI") for or on behalf of the Covered Entity;

WHEREAS, the Covered Entity and the Business Associate desire to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and implementing regulations which are codified at 45 C.F.R. Parts 160 and 164, as such regulations may be amended from time to time (collectively referred to herein as the "HIPAA Standards");

WHEREAS, the Covered Entity and the Business Associate acknowledge and agree that capitalized terms used, but not otherwise defined, herein are as defined in the HIPAA Standards; and

WHEREAS, the HIPAA Standards require that the Covered Entity obtain satisfactory assurances that the Business Associate will appropriately safeguard the PHI used or disclosed by the Business Associate in the course of performing services pursuant to the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the parties agree as follows:

1. Application

- a) This Business Associate Agreement applies only when the Business Associate creates, receives, maintains, or transmits PHI on behalf of the Covered Entity. As such, the Covered Entity understands and agrees that it is solely responsible for complying with the HIPAA standards with respect to PHI that the Covered Entity processes with software provided by the Business Associate that is operating on systems owned or controlled by the Covered Entity.

2. Permitted Uses and Disclosures by Business Associate

- a) Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity. Business Associate shall not use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law. The Business Associate shall limit, to the extent practicable, the use and disclosure of PHI to the limited data set (as defined in 45 C.F.R. § 164.514(e)(2)) or the

minimum necessary to accomplish the intended purpose of the use or disclosure of the PHI or as required pursuant to the Agreement.

- b) Except as otherwise limited in this Business Associate Agreement, Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the recipient that the PHI will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient, and the recipient promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- c) Business Associate may use PHI to provide Data Aggregation services.

3. Obligations of Covered Entity

- a) Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such Notice of Privacy Practices and the Business Associate shall comply with such Notice of Privacy Practices.
- b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 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 C.F.R. § 164.522.
- d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by Covered Entity.

4. Obligations and Activities of Business Associate

- a) Business Associate shall ensure, through a written agreement, that any subcontractors of Business Associate that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such PHI, including without limitation, the restrictions, conditions and requirements of this Business Associate Agreement and the HIPAA Standards.
- b) Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement, any Breach, any breach of security of personal information as defined by any applicable state law, or any successful Security Incident involving PHI, in each case of which the Business Associate, or a subcontractor of the Business Associate, becomes aware (each, an “Incident”). Initial notice of an Incident shall be made to the Covered Entity no later than ten (10) business days after discovery of the Incident by Business Associate and Business Associate shall provide to Covered Entity any information necessary for Covered Entity to notify affected individuals and/or governmental authorities of the Incident within thirty (30) business days of discovery. The

foregoing notwithstanding, for purposes of the Security Incident reporting obligation under this paragraph 4(b), Business Associate hereby reports and Covered Entity acknowledges that (i) Business Associate experiences inconsequential incidents from time to time such as scans or "pings" that are not permitted past Business Associate's firewall ("Inconsequential Attempted Incidents"), and (ii) this report satisfies the requirements of the HIPAA Standards with respect to Inconsequential Security Incidents until such time as further guidance from the Secretary indicates otherwise.

- c) Business Associate shall restrict disclosures or communicate confidentially with Individuals as required by the HIPAA Standards and as requested by the Covered Entity.
- d) If the Business Associate maintains PHI in a Designated Record Set, the Business Associate shall:
 - (1) provide access (including inspection, obtaining a copy or both), in the time and manner designated by Covered Entity, and Business Associate shall not charge any fee greater than the lesser of the amount permitted by State law or the Business Associate's actual cost of postage, labor and supplies for complying with the request;
 - (2) make available PHI for amendment and incorporate any amendment(s) in the time and manner designated by Covered Entity; and
 - (3) provide access to PHI that is in electronic format in the form and format requested by the Individual or Covered Entity, or if not readily producible in such form and format, in a readable electronic form and format agreed to by the Covered Entity and the Individual, and transmit such copy directly to an entity or person designated by the Individual or Covered Entity. Business Associate shall not charge any fee greater than the lesser of the amount permitted by State law or the Business Associate's actual cost of postage, labor and supplies for complying with the request.
- e) Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's or Business Associate's compliance with the HIPAA Standards. Nothing in this Section shall be construed as a waiver of any legal privilege or of any protections for trade secrets or confidential commercial information by Business Associate.
- f) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity or Business Associate under the HIPAA Standards to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate shall provide, in the time and manner designated by Covered Entity, an accounting of disclosures required by the HIPAA Standards made by the Business Associate.

- g) Business Associate shall prevent use or disclosure of the PHI other than as provided for in this Business Associate Agreement and shall comply, where applicable, with the HIPAA Standards with respect to electronic PHI and State law. The Business Associate shall implement and maintain safeguards as necessary to ensure that all PHI is used or disclosed only as authorized under the HIPAA Standards and this Business Associate Agreement.

5. Term and Termination

- a) Term. The Term of this Business Associate Agreement shall be effective as of the date Business Associate creates, receives, maintains, or transmits PHI pursuant to the Agreement (“Effective Date”), and shall terminate when all of the PHI maintained by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if Business Associate determines that it is infeasible to return or destroy the PHI, protections are extended to such PHI in accordance with the termination provisions in this section.
- b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Business Associate Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation, and Covered Entity may terminate the Agreement if Business Associate does not cure the breach or end the violation within thirty (30) calendar days of its receipt of written notice of such breach.
- c) Effect of Termination. Upon termination of the Agreement or this Business Associate Agreement, for any reason, Business Associate shall return or, if authorized by Covered Entity, destroy all PHI maintained by Business Associate on behalf of Covered Entity at Covered Entity’s expense. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible. This Section 5(c) shall survive termination of this Business Associate Agreement.

6. Miscellaneous

- a) No Private Cause of Action. This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Standards or other state or federal law or regulation relating to privacy or security.
- b) Assumption of Obligations. Except as expressly provided in the Agreement or this Business Associate Agreement, Business Associate will not assume any obligations of Covered Entity under the HIPAA Standards. To the extent that Business Associate is to carry out any of Covered Entity’s obligations under the HIPAA Standards as expressly provided in the Agreement or this Business Associate Agreement, Business Associate will comply with the requirements of the HIPAA Standards that apply to Covered Entity in the performance of such obligations.
- c) Amendment. This Business Associate Agreement shall only be amended or modified upon written consent of the parties.

- d) Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect.
- e) Governing Law. This Business Associate Agreement shall be interpreted, construed, and governed according to the laws of the State in which the Covered Entity maintains its principal place of business. The parties agree that venue shall lie in Federal and State courts in the State in which the Covered Entity maintains its principal place of business, without regard to its conflicts of law principles, regarding any and all disputes arising from this Business Associate Agreement.
- f) Notices. Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (a) delivered personally, (b) delivered by express courier (with tracking and delivery confirmation), or (c) sent by registered or certified mail, postage prepaid (with delivery confirmation), to the addresses set forth above (or such other address as either party shall subsequently advise the other of in writing pursuant to this paragraph 6(f)) and shall be considered given upon delivery.

{Signature Page Follows}

IN WITNESS WHEREOF, the parties hereto have executed this Business Associate Agreement as of the Effective Date.

[BUSINESS ASSOCIATE]

By: _____
Printed Name:
Title:

[COVERED ENTITY]

By: _____
Printed Name:
Title: