

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into as of the _____ day of _____, 20____, by and between:

(hereinafter referred to as "Covered Entity") and

(hereinafter referred to as "Business Associate").

WHEREAS, Covered Entity has engaged Business Associate to perform certain services or provide certain goods, or both;

WHEREAS, Covered Entity possesses or will possess individually identifiable health information, which information is subject to the HIPAA Rules, as defined below;

WHEREAS, in the course of performing services or providing goods to Covered Entity, Business Associate may receive such protected health information from Covered Entity or otherwise obtain access to such information; and

WHEREAS, Covered Entity seeks to ensure that Business Associate appropriately safeguards all such protected health information.

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

- a. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Part 160 and Part 164.
- b. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules, as modified to reflect any changes made to such terms from time to time: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information or PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI and Use. Any terms used or capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Rules, and shall be deemed to be modified to reflect any changes made to such terms from time to time.

- c. "Service Agreement" shall mean the underlying service agreement entered into by the parties hereto.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. **Use or Disclosure.** Business Associate shall not use or disclose PHI other than as permitted or required by the Service Agreement, this Agreement or as required by law. Business Associate shall comply with the provisions of this Agreement relating to privacy and security of PHI and all present and future provisions of HIPAA and the HIPAA Rules that relate to the privacy and security of PHI and that are applicable to Covered Entity and Business Associate.
- b. **Safeguards.** Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and shall ensure that any subcontractor or agent that receives PHI from Business Associate also agrees to implement reasonable and appropriate safeguards to protect the privacy and security of PHI.
- c. **Reporting.** No later than ten (10) business days following discovery, Business Associate shall provide written notice to Covered Entity of any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including a Breach or Security Incident. Business Associate shall provide such information to Covered Entity as needed in order for Covered Entity to meet the data breach notification requirements under applicable state data breach notification rules and the HIPAA Rules without unreasonable delay, and in any event within twenty (20) business days after the discovery of the Breach or Security Incident. Business Associate agrees to fully cooperate, coordinate with and assist Covered Entity in any investigations relating to a Breach, Security Incident or other violation of this Agreement by Business Associate. Business Associate shall, if requested by Covered Entity, draft and send all Breach notifications required under 45 CFR 164.404 to affected individuals without unreasonable delay and in no case more than 60 days from the discovery of the Breach. Business Associate shall be solely responsible for the cost of said Breach notification.
- d. **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach or any use or disclosure of PHI by Business Associate that violates the requirements of this Agreement.
- e. **Subcontractors and Agents.** Business Associate shall ensure that any subcontractors that create, 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 information.
- f. **Access.** At the request of Covered Entity, Business Associate shall provide to Covered Entity (or, at the direction of Covered Entity, to an individual) access to PHI contained in a designated record set in order to comply with the access provisions contained in 45 C.F.R. §164.524 and/or the policies of Covered Entity, including access in a readable electronic format, where applicable.

- g. Amendment. At the request of Covered Entity or an individual, Business Associate shall make any amendment(s) to PHI in a designated record set as directed to or agreed to by Covered Entity, pursuant to 45 C.F.R. §164.526 and/or the policies of Covered Entity, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526.
- h. Audit and Inspection. Business Associate shall make its internal practices, books and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- i. Accounting. Business Associate shall maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528.
- j. Training. Business Associate shall ensure that its employees, agent, representatives, subcontractors and other members of its workforce receive appropriate training on HIPAA and the HIPAA Rules.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. Business Associate may only use or disclose PHI received from, or created or received on behalf of, Covered Entity to perform functions, activities or services for or on behalf of Covered Entity as set forth in the Service Agreement and consistent with this Agreement.
- b. Business Associate may use or disclose PHI as required by law.
- c. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- d. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

4. OBLIGATIONS OF COVERED ENTITY

Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Rules.

5. TERM AND TERMINATION

- a. Term. The term of this Agreement shall begin on the date first written above and shall continue until the Agreement is terminated in accordance with the provisions of Section 5(b) hereof, or when the Service Agreement terminates.
- b. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the

violation within the time specified by Covered Entity.

- c. Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate shall return to Covered Entity, or if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained or received by Business Associate or its subcontractor on behalf of Covered Entity that the Business Associate or subcontractor still maintains in any form. Business Associate shall retain no copies of the PHI.
- d. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section in effect or as amended.
- b. Amendment. The parties agree to take such action necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules or any other applicable law.
- c. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- d. State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without written authorization from the individual who is the subject of the PHI, or written authorization from any other person, where state law requires authorization for such use or disclosure.
- e. Injunctions. Covered Entity and Business Associate agree that any violation by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity or under this Agreement, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- f. Indemnification. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from or relating to the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement.
- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, obligations, remedies or

liabilities.

- h. Conflicts. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

Name of Covered Entity

Name of Business Associate

BY: _____
Signature of Authorized Representative

BY: _____
Signature of Authorized Representative

Name and Title

Name and Title