

**THIS AGREEMENT** is made by and between \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, ("Covered Entity") and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ ("Business Associate"). Covered Entity and Business Associate, may hereinafter be referred to collectively as the "Parties."

**WHEREAS**, this Agreement governs the terms and conditions under which Business Associate may access Individually Identifiable Health Information, (PHI) maintained by Covered Entity that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as set forth at 45 CFR Part 160 and Part 164 Subparts A, C, and E (the "Privacy Standards" and the "Security Standards") and other applicable Statutes and Regulations, including, but not limited to Title XII, subtitle D of the Health Information Technology for Economic and Clinical Health Act, ("HITECH Act") all of which may be amended from time to time; and

**WHEREAS**, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA and all other applicable Statutes and Regulations, applicable to their relationship; and

**WHEREAS**, this Agreement is intended to comply with the provisions of 45 CFR 164.504(e).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## IT IS HEREBY AGREED:

**1. Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Business Associate, Breach, Covered Entity, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Individual Minimum Necessary, Marketing, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### **2. Obligations and Activities of Business Associate.**

- a) Business Associate may use or disclose PHI for the proper management and administration of the legal responsibilities of the Covered Entity/Business Associate and if such use or disclosure is in compliance with HIPAA and other applicable Rules.
- b) Business Associate will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- c) Business Associate agrees to develop and implement written policies to safeguard and prevent use or disclosure of PHI other than provided for by this Agreement.
- d) 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 Agreement.
- e) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement or any Security incident resulting in unauthorized access or acquisition of PHI.

- f) Business Associate expressly recognizes that Covered Entity has certain reporting disclosure obligations to the Secretary of the Department of Health and Human Services and the Individual in case of a Security Breach of unsecured Protected Health Information (as defined in 45 CFR 164.402).
- g) Business Associate agrees to ensure, by way of a written agreement, that all subcontractors, agents or affiliates that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to this Agreement in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).
- h) Business Associate agrees to provide access to PHI, in the time and manner designated by Covered Entity in accordance with 45 CFR 164.524.
- i) Business Associate agrees to make amendments to PHI at the written request of Covered Entity or an Individual in accordance with 45 CFR 164.526.
- j) Business Associate agrees to make available to the Covered Entity internal policies relating to the use and disclosure of PHI for purposes of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules.
- k) Business Associate agrees to document disclosures of PHI and otherwise provide information as would be required for Covered Entity to respond to a request by an Individual for accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- l) Business Associate agrees that it will not access or use PHI of any Individual except for those Individuals whose PHI has been disclosed to Business Associate, and it will further limit access to that PHI that is necessary to the activities undertaken by Business Associate on behalf of Covered Entity.
- m) Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any PHI without a valid authorization from the applicable Individual.
- n) Business Associate agrees that it will not engage in any communication considered "Marketing" under the HITECH Act, without a valid authorization from the applicable Individual and will otherwise comply with all applicable requirements of HIPAA's Security Rule contained in 45 CFR 164.308, 164.310, 164.312 and 164.316.

### 3. Terms and Termination.

- a) The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall continue until \_\_\_\_\_ unless previously terminated in writing by one of the parties.
- b) Upon termination of this Agreement for any reason, Business Associate shall return to covered entity (or take other agreed upon measures such as destruction, etc.) all PHI received from Covered Entity, or created, maintained, or received by business associate on behalf of Covered Entity, that the business associate still maintains in any form. Business Associate shall retain no copies of the PHI.
- c) All duties and obligations of the Parties under this Agreement shall continue until 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. If it is infeasible to return or destroy PHI, Business Associate will continue to extend the protections of this Agreement.

#### 4. Miscellaneous.

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of or amendments to the HIPAA Rules and any other applicable law, rule, regulation or statute. Any Ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

#### 5. Governing Law.

This Agreement shall be enforced and construed in accordance with the laws of the State of \_\_\_\_\_.  
Jurisdiction of any litigation with respect to this Agreement shall be in \_\_\_\_\_, with a court of  
competent jurisdiction located in \_\_\_\_\_ County.

#### COVERED ENTITY

By: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### BUSINESS ASSOCIATE

By: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_