

BUSINESS ASSOCIATE AGREEMENT

Date (the "Effective Date"):

State: _____

County: _____

This Business Associate Agreement (the "**Agreement**") is made and entered into as of the Effective Date by and between the following parties,

hereinafter collectively referred to as the "**Parties**" and each individually as the "**Party**":

COVERED ENTITY:

BUSINESS ASSOCIATE:

(the "**Covered Entity**"),

(the "**Business Associate**"),

Name: _____

Name: _____

Address: _____

Address: _____

Representative: _____

Representative: _____

Email/Phone number: _____

Email/Phone number: _____

WHEREAS this Agreement sets forth the terms of the disclosure and use of the Protected Health Information (the "**PHI**") provided by, created, or received by the Business Associate from or on behalf of the Covered Entity. The Parties agree to be obliged by the privacy rule and the security rule specified by the Health Insurance Portability and Accountability Act of 1996 (the "**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), and other related rules and regulations.

DEFINITIONS:

For the purpose of this Agreement, the terms of this Agreement are defined as follows:

The "**Protected Health Information**" or "**PHI**" has the same meaning as the term "Protected Health Information" in 45 CFR§160.103, limited to the information created or received by the Business Associate on behalf of or from the Covered Entity.

The "**Breach**" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the privacy rule, which compromises the security or privacy of the PHI.

The "**CFR**" means the Code of Federal Regulations.

The "**Breach Notification Rule**" means the portion of HIPAA set forth in Subpart D of 45 CFR Part 164.

The "**Individual**" means the person who is the subject of the Protected Health Information.

The "**Privacy Rule**" means the standards for privacy of individually identifiable health information at 45 CFR Part 160 and Part 164, Subparts A and E.

The "**Security Rule**" means the Security Standards at 45 CFR Part 160 and Part 164, Subparts A and C.

The terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Privacy Rule and Security Rule.

SUBJECT OF THE AGREEMENT:

The Parties have entered or will enter into service or any other agreement under which the Business Associate shall provide specific services to the Covered Entity (the "**Master Agreement**"). Executing the Master Agreement requires the Covered Entity to disclose and the Business Associate to receive and use the PHI.

USE AND DISCLOSURE OF PHI:

Business Associate may use or disclose the PHI following the terms of this Agreement, as permitted under the Privacy Rule and as required by law.

The Business Associate agrees to make uses, disclosures, and requests for the PHI consistent with the minimum necessary policies and procedures of the Covered Entity.

Except as otherwise limited by this Agreement, federal or state law, the Covered Entity authorizes the Business Associate: *[choose as appropriate]*

- To use the PHI for the proper management and administration of the Business Associate's operations
- To carry out the Business Associate's legal responsibilities.
- Other _____.

The Business Associate may disclose the PHI for the purposes specified herein above. These disclosures must comply with the following conditions: *[choose as appropriate]*

- Before disclosing the PHI to a third party, the Business Associate should obtain written assurance from the third party. This assurance should confirm that the PHI shall be held confidential under the terms outlined in this Agreement and used or further disclosed only as required by law or for the purpose it was disclosed to this third party.
- An agreement must be obtained from this third party to immediately notify the Business Associate of any breaches of PHI confidentiality to the extent the Business Associate is aware of the Breach.
- Other _____

The Business Associate shall:*[choose as appropriate]*

- use appropriate safeguards and comply, where applicable, with the Privacy Rule to prevent the use or disclosure of the PHI other than as provided by the Agreement.
- ensure that any subcontractors that create, receive, maintain, or transmit the PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate concerning such information.

- make reasonable efforts to mitigate any harmful effect known to the Business Associate of any use or disclosure of the PHI by the Business Associate or the agents or subcontractors in violation of the requirements of this Agreement.
- Other _____

REPORTING DISCLOSURES OF THE PHI AND SECURITY INCIDENTS:

The Business Associate shall report to the Covered Entity any unauthorized use or disclosure of information not permitted by the Agreement of which the Business Associate becomes aware, including any breaches of the PHI as required by the Privacy Rule. The Business Associate agrees to report any such event within _____ business days.

REPORTING BREACHES AND UNSECURED PHI:

The Business Associate shall promptly notify the Covered Entity in writing of any discovery of the Breach concerning unsecured PHI within a maximum time frame of _____ calendar days, but in no case later than 60 calendar days after discovery of the Breach, unless a shorter time frame exists under state law.

RESPONSIBILITIES OF THE COVERED ENTITY:

The Covered Entity is obligated to: *[choose as appropriate]*

- Notify the Business Associate about any limitations in its privacy practices notice, to the extent that such limitations may affect the Business Associate's use or disclosure of the PHI.
- Inform the Business Associate of any alterations or withdrawal of the Individual's permission to use or disclose the PHI if such changes may affect the Business Associate's use or disclosure of PHI.
- Notify the Business Associate of any restriction on the use or disclosure of the PHI agreed upon by the Covered Entity if these restrictions may affect the Business Associate's use or disclosure of the PHI.
- Except for data aggregation or management and administrative activities of the Business Associate, the Covered Entity shall not request the Business Associate to use or disclose the PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.

TERM AND TERMINATION:

This Agreement shall be effective as of the Effective Date and remain in effect:

- Until termination of the Master Agreement.
- Other _____

If the Business Associate materially breaches the Agreement, the Covered Entity shall have the right to terminate the Agreement unilaterally. The Covered Entity shall provide written notice of the Breach, and if the Business Associate fails to remedy it within _____ days, the Covered Entity shall immediately terminate the Agreement.

RETURNING OF THE PHI:

Once the Agreement is terminated, all the PHI received from the Covered Entity or created by the Business Associate on behalf of the Covered Entity should be returned or destroyed. Upon request, the Business Associate shall provide the Covered Entity with a written certification of the destroyed PHI.

NOTICE:

Any notice under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth herein or to such other address as one party may have furnished to the other in writing or or to emails set forth herein.

SEVERABILITY:

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

GOVERNING LAW AND DISPUTE RESOLUTION:

This Agreement shall be governed by and interpreted in accordance with the laws of _____ State, and any disputes arising out of or in connection with this Agreement shall be exclusively resolved by the courts of _____ State.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the Effective Date.

Covered Entity's Name and Signature: _____

Business Associate's Name and Signature: _____