

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA Business Associate Agreement** (the “Agreement”), is made and is effective as of this ____ day of _____, 2013 (“Effective Date”), between _____, located at _____ (“Business Associate”) and _____, located at _____ (“Company” or “Covered Entity”) (each a “Party” and collectively the “Parties”).

BACKGROUND

This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is created, received, maintained or transmitted by the Business Associate from or on behalf of Covered Entity (“PHI”), will be handled between the Business Associate and Covered Entity. The Parties are committed to complying with the Privacy Standards for Individually Identifiable Health Information (the “Privacy Rule”) and the Security Standards for electronic Protected Health Information (the “Security Rule”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and implementing regulations (the “HIPAA Rules”), as each is amended from time to time.

1. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in HIPAA and the HIPAA Rules.

1.1 Breach. “Breach” means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI.

1.2 Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. §160.103, and in reference to the party to this Agreement, shall mean Business Associate.

1.3 Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. §160.103, and in reference to the party to this Agreement, shall mean Company.

1.4 Protected Health Information. “Protected Health Information” or “PHI” has the meaning as set out in its definition at 45 C.F.R. §160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of the Covered Entity, and includes “Electronic Protected Health Information (“ePHI”) as defined in 45 C.F.R. §160.103.

2. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose PHI as necessary to perform the services set forth in any underlying services agreement between the Parties.

(b) Business Associate may use or disclose PHI as required by law.

(c) Business Associate may de-identify information in accordance with HIPAA standards and use such information for internal business purposes.

(d) Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.

(e) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the purposes described in (f) and (g) below.

(f) Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.

3. Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

(c) Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including a Breach of unsecured PHI as required at 45 C.F.R. §164.410, and any Security Incident of which it becomes aware;

(d) In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;

(e) In the time and manner agreed upon by Covered Entity and Business Associate, make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524;

(f) In the time and manner agreed upon by Covered Entity and Business Associate, make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered

Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526;

(g) Maintain and, in the time and manner agreed upon by Covered Entity and Business Associate, make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528;

(h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

4. Privacy Practices and Restrictions

Covered Entity shall notify Business Associate of any (i) limitation(s) in the notice of privacy practices of Covered Entity under 45 C.F.R. §164.520; (ii) changes in, or revocation of, the permission by an individual to use or disclose his or her PHI; or (iii) restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522; the extent that such limitation, change or restriction may affect Business Associate's use or disclosure of PHI. Covered Entity represents that it has obtained all necessary authorizations, if any, for the use or disclosure of PHI to enable Business Associate to perform services for or on behalf of Covered Entity.

5. Term and Termination

5.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until the termination of the underlying business relationship or it is terminated as set forth in this Section 5, whichever is sooner.

5.2 Termination by Covered Entity. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has breached a material term of the Agreement and Business Associate has not cured the breach or ended the violation within thirty (30) calendar days of such written notice.

5.3 Termination by Business Associate. If Business Associate reasonably believes that Covered Entity has breached a material term of this Agreement, Business Associate shall provide thirty (30) calendar days notice of its intention to terminate this Agreement. Business Associate will cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating.

5.4 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- (a) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- (b) Return to Covered Entity or destroy the remaining PHI that the Business Associate still maintains in any form;
- (c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent use or disclosure of such PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- (d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 2 which applied prior to termination; and
- (e) Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

5.5 Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. Miscellaneous

6.1 Amendments; Waiver. This instrument sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement. This Agreement may be changed or modified only by an agreement in writing signed by both parties. Any waiver of any term of this Agreement or the breach of any of its provisions shall not operate or be construed as a waiver of any other or subsequent failure of strict performance.

6.2 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

6.3 Notices. All notices required under this Agreement shall be in writing, addressed to the other party at the address indicated in this Agreement, (or at such other address as either party may designate by proper written notice to the other party). Notices may be delivered by hand or sent by facsimile transmission or certified mail, return receipt requested. Notices shall be effective upon receipt. Notices sent by mail shall be deemed received on the date of receipt indicated by the return verification provide by the U.S. Postal Service.

6.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and Security Rule.

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

BUSINESS ASSOCIATE:

COVERED ENTITY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____