

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into effective as of April 14, 200___, by and between _____, Plan Sponsor of _____ ("Covered Entity") and _____ ("Business Associate").

WITNESSETH:

WHEREAS, pursuant to a services agreement entered into by and between Plan Sponsor, on behalf of Covered Entity, and Business Associate, Business Associate provides certain functions, activities, and services (collectively "Services") to Covered Entity.

WHEREAS, Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information ("PHI") that is confidential and must be afforded special treatment and protection pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulations, the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") so that Business Associate can perform those Services.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

ARTICLE I Definitions

1.1 Meaning of Terms.

The following terms shall have the meaning ascribed to them in this Section:

- (a) **COVERED PERSON** means the person who is subject of the PHI, and has the same meaning as the term "individual" as defined in 45 CFR § 164.501, including a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (b) **DESIGNATED RECORD SET** shall mean a group of records maintained by or for Covered Entity that is:
 - (i) The medical records and billing records about Covered Persons maintained by or for a covered health care provider;
 - (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - (iii) Used, in whole or in part, by or for the Covered Entity to make decisions about Covered Persons.
- (c) **HHS** shall mean the United States Department of Health and Human Services.

- (d) **PARTIES** means Business Associate and Covered Entity.
- (e) **PRIVACY RULE** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR § 164, Subparts A and E.
- (f) **PROTECTED HEALTH INFORMATION ("PHI")** means "protected health information" as defined in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity or another Business Associate of the Covered Entity.
- (g) **REQUIRED BY LAW** has the same meaning as the term "required by law" in 45 CFR § 164.501.
- (h) **SECRETARY** means the Secretary of the Department of Health and Human Services ("HHS") or his or her designee.
- (i) **STANDARD TRANSACTION** means an electronic "standard transaction," as defined in 45 CFR § 162.103.

1.2 Other Terms. Other capitalized terms have the meaning set forth in the context in which they first appear. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501, as amended from time to time.

ARTICLE II

General Terms

- 2.1** Interpretation of Provisions. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the Privacy Rule (as may be expressly amended from time to time by the HHS or as a result of final interpretations by HHS, an applicable court, or another applicable regulatory agency with authority over the Parties), the Privacy Rule shall prevail.
- 2.2** Provisions Permitted by Privacy Rule. Where provisions of this Agreement are different from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of the Agreement shall control.
- 2.3** Conflicts with Services Agreement. In the event of an inconsistency between the provisions of this Agreement and the services agreement, the provisions of this Agreement shall control.

ARTICLE III

Obligations and Activities of Business Associate

- 3.1** Limits on Use and Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement, the services agreement or as Required By Law.

- 3.2** Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- 3.3** Mitigation of Harm. 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.
- 3.4** Report of Improper Use or Disclosure. Business Associate agrees promptly to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement or the services agreement of which Business Associate becomes aware.
- 3.5** Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, of the Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to the PHI it receives.
- 3.6** Access to Records. Business Associate shall provide access, at the request of Covered Entity to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to a Covered Person, in order to meet the requirements under 45 CFR § 164.524. Access will be provided within fifteen business days at the Business Associate's office, or upon request, copies will be sent within that time frame.
- 3.7** Amendments to PHI. Business Associate agrees to make PHI available for any amendments that Covered Entity agrees to make pursuant to 45 CFR § 164.526 at the request of Covered Entity or a Covered Person, as needed to allow Covered Entity to comply with its obligations under 45 CFR § 164.526. Access will be provided within fifteen business days at the Business Associate's office, or upon request, copies will be sent within that time frame.
- 3.8** Availability of Internal Practices, Books and Records. Business Associate will make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or to the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule. Access will be provided within fifteen business days at the Business Associate's office, or upon request, if reasonably possible, copies will be sent within that time frame.
- 3.9** Documentation of Disclosures. Business Associate will document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by a Covered Person for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 3.10** Availability of Information to Respond to Request. Business Associate agrees to provide to Covered Entity or a Covered Person, in the time and manner designated by Covered Entity, information collected in accordance with Section 3.9 of this Agreement, to permit

Covered Entity to respond to a request by a Covered Person for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

- 3.11 Training. Business Associate will provide appropriate training to its workforce in security, privacy, and confidentiality issues and regulations relating to PHI.

ARTICLE IV

Permitted Uses and Disclosures by Business Associate

- 4.1 Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on Covered Entity's behalf, and to use and to disclose the minimum necessary PHI to perform functions, activities, or services for or on behalf of Covered Entity specified in the services agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for "treatment, payment and health care operations" in accordance with the HIPAA Privacy Rule. Business Associate may rely upon the representation of another Business Associate or the Plan Sponsor that certain information is minimally necessary.
- 4.2 Appropriate Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate will not use or disclose PHI in a manner that would violate the Privacy Rule if done by the Covered Entity.
- 4.3 Confidentiality Assurances and Notification. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtained reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.4 Reporting of Violations. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 42 CFR § 164.502(j)(1).

ARTICLE V

Application of the Standards for Electronic Transactions

- 5.1 Compliance with Standard Transaction Rules. In connection with the services to be provided Covered Entity, Business Associate agrees that if it (or its agent or subcontractor) conducts an electronic transmission for which the Secretary has established a "Standard Transaction," Business Associate (or its agent or subcontractor) shall comply with the requirements of the Standards for Electronic Transactions (45 CFR parts 160 and 162).

- 5.2** No Deviation from Rules. Business Associate agrees that, in connection with the transmission of Standard Transactions, it will not (and will not permit any agent or subcontractor with which it might contract to):
- (a) Change the definition, data condition, or use of a data element or segment in a standard transaction;
 - (b) Add any data elements or segments to the maximum defined data set;
 - (c) Use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification; or
 - (d) Change the meaning or intent of the standard's implementation specification(s).

ARTICLE VI

Indemnification

- 6.1** Indemnification. Business Associate shall indemnify and hold harmless Covered Entity against, and reimburse Covered Entity for, any expense, loss, damages, legal fees, or costs arising out of or related to any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions, whether brought by a third party or asserted by Business Associate, arising out of or related to Business Associate's obligations under this Agreement or its use or disclosure of PHI. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney fees associated with any claim, demand, action, cause of action, or lawsuit arising out of or related to such acts or omissions.

ARTICLE VII

Obligations of Covered Entity

- 7.1** Notice of Privacy Practices. Covered Entity will provide Covered Persons with the required notice of privacy practices, and will provide Business Associate with a copy of the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- 7.2** Change or Revocation of Permission. Covered Entity will provide Business Associate with any changes in, or revocation of, permission by a Covered Person to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 7.3** Restrictions on Use or Disclosure. Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
- 7.4** No Request to Use or Disclose in Impermissible Manner. Except as necessary for the management and administrative activities of the Business Associate as allowed in Section 4 of this Agreement, Covered Entity shall not request Business Associate to use or

disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

- 7.5 Plan Amendments and Certifications. Covered Entity will execute all Plan Amendments and Certifications needed to comply with the Privacy Rule in a timely manner.

ARTICLE VIII

Term and Termination

- 8.1 Term. This Agreement will be effective as of the date first documented above, and will terminate when the services agreement between the Parties terminates.

- 8.2 Termination of Services Agreement. If the services agreement terminates for any reason, this Agreement shall also terminate, except as provided in Section 8.4.

- 8.3 Termination with Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within a period of thirty days, Covered Entity may terminate this Agreement and the services agreement. Covered Entity may immediately terminate this Agreement, and services agreement, if Business Associate has breached a material term of this Agreement and cure is not possible. If termination is not feasible, Covered Entity shall contact the Secretary.

- 8.4 Effect of Termination.

- (a) Except as provided in paragraph (b) of this Section 8.4, upon termination of this Agreement for any reason, Business Associate will return or destroy (at Covered Entity's election) all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of subcontractors or agents of Business Associate.
- (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- (c) This provision shall survive termination of this Agreement.

ARTICLE IX

Miscellaneous

- 9.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Agreement nor any rights or

obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other party.

- 9.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA, or as mutually agreed.
- 9.3 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- 9.4 Entire Agreement. This document constitutes the entire agreement of the Parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein.
- 9.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana to the extent that the provisions of HIPAA or the Privacy Rule do not preempt the laws of the State of Indiana.
- 9.6 Modifications. Any modifications to this Agreement shall be valid only if made in writing and signed by a duly authorized officer of both Parties.
- 9.7 Notice. Any notice required or permitted to be given by either Party under this Agreement shall be sufficient if in writing and hand delivered (including delivery by courier), sent by postage prepaid mail or facsimile transfer, as follows:

If to Plan Sponsor or Covered Entity:

If to Business Associate:

Attn: _____

Attn: _____

- 9.8 Severability. The Parties agree that if a court determines, contrary to the intent of the Parties, that any of the provisions or terms of this Agreement are unreasonable or contrary to public policy, or invalid or unenforceable for any reason in fact, law, or equity, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions and terms of this Agreement. Should any particular provision of this Agreement be held unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to the fullest extent that would be reasonable and enforceable.
- 9.9 Waiver of Breach. No failure or delay by either party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.
- 9.10 Titles. Titles or headings are used in this Agreement for reference only and shall not have any effect on the construction or legal effect of this Agreement.

9.11 Independent Contractors. For purposes of this Agreement, Covered Entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this Agreement are intended to create, nor shall they be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this Agreement. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the Parties.

9.12 No Third Party Beneficiaries. It is the intent of the Parties that this Agreement is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this Agreement and no privity of this contract shall exist between third parties and each Party.

Plan Sponsor

By: _____

Title: _____

Date: _____

Business Associate

By: _____

Title: _____

Date: _____