

## Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into by and between

\_\_\_\_\_ (hereinafter "Covered Entity") and \_\_\_\_\_  
EMPLOYER GROUP NAME AGENT/AGENCY NAME

(hereafter "Business Associate") (individually, "Party" and collectively, the "Parties"). This Agreement is effective on the date it is signed by both Parties ("Effective Date").

Business Associate agrees not to engage in any practice harmful to the best interests of Covered Entity. Business Associate further agrees that any such practice can serve as the basis for the immediate termination of this Agreement.

Services provided by Business Associate may be subject to state and federal privacy laws and regulations, including but not limited to the Gramm-Leach-Bliley Act ("GLBA"), Health Insurance Portability and Accountability Act ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH"), and their implementing regulations, as amended from time to time, any and all applicable state privacy and security statutes and any relevant regulations enacted or promulgated in conjunction with applicable state and federal privacy and security laws.

For purposes of the following, capitalized terms not otherwise defined shall have those meanings ascribed by HIPAA/HITECH. In the capacity as a Business Associate to Covered Entity, Business Associate agrees:

1. not to use or to disclose Protected Health Information ("PHI") other than as permitted or required by this Agreement or as required by law;
2. to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. to only request or disclose the minimum amount of PHI necessary to accomplish the purpose of the use or disclosure;
4. to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity as required under HIPAA/HITECH;
5. to report to Covered Entity, within 24 hours of discovery, any use or disclosure or disclosure of the PHI by Business Associate or Business Associate's Agents, including Subcontractors, that is not provided for by this Agreement and of which Business Associate becomes aware;
6. to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, disclosure or Breach of PHI by Business Associate in violation of the requirements of this Agreement;
7. to the extent that the unauthorized use or disclosure occurs while the PHI is in the possession of Business Associate and/or its Agents, including Subcontractors, or representatives, Business Associate will be responsible for: (1) immediately reporting any such unauthorized use or disclosure to Covered Entity; (2) assisting Covered Entity in the notification of the occurrence to all necessary parties as required by law, regulation or as determined necessary by Covered Entity; and (3) for all costs incurred in resolving the incident;
8. to provide access, at the request of Covered Entity, and in the time and manner it specifies in writing with reasonable advance notice, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to individuals who are the subject of the PHI (or their designees);
9. to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs in response to a request of Covered Entity or an Individual, and in the time and manner as Covered Entity may specify in writing with reasonable advance notice;
10. to make available to Covered Entity, or to the Secretary of the Department of Health and Human Services (the "Secretary"), Business Associate's internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity (the "Materials"). The Materials shall be provided by Business Associate in the time and manner specified by Covered Entity in writing with reasonable advance notice to Business Associate or designated by the Secretary;
11. to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA/HITECH;
12. to provide to Covered Entity or an Individual designated by Covered Entity, in the time and manner as Covered Entity may specify in writing with reasonable advance notice, information Business Associate has collected in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA/HITECH;

13. to ensure that any Agent, including a Subcontractor, to whom Business Associate provides PHI either received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate under this Agreement and HIPAA/HITECH with respect to such information;
14. to provide appropriate training regarding the requirement of this subsection to any employee or Subcontractor accessing, using or disclosing PHI and shall implement a system of sanction for any employee, Agent or Subcontractor who violates this agreement;
15. at termination of this Agreement, to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity or to extend the protections of this Agreement to the information and to 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; and
16. to comply at all times with all applicable HIPAA/HITECH laws and regulations, as may be amended that are not otherwise addressed herein.

Miscellaneous

- A. Indemnification. Business Associate shall indemnify and hold harmless Covered Entity from and against any and all losses, expenses, damages, or injuries that Covered Entity may sustain as a result of, or arising out of, a breach of this Agreement by Business Associate or its employees, agents, or subcontractors including, but not limited to, any unauthorized use, disclosure, damage, or destruction of PHI, or any negligent acts or omissions or intentional misconduct of Business Associate or its employees, agents, or subcontractors.
- B. Relationship of Parties. None of the provisions of this Agreement are intended to create or shall be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any Arrangement between the Parties.
- C. Ownership of PHI. The PHI and any related information created for or received from Covered Entity is, and will remain, the property of Covered Entity. Business Associate agrees that it acquires no ownership rights to, or title in, the PHI or any related information.
- D. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- E. Successors and Assigns. This Agreement shall be binding on the Parties and their successors, but neither Party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- F. Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any occasion.
- G. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.
- H. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties.
- I. Notice. Any notice to the other Party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid.
- J. Interpretation. This Agreement shall be interpreted as broadly as necessary to implement and comply with the Privacy, Security, and Omnibus Rules. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with and is consistent with the Privacy, Security, and Omnibus Rules.

Covered Entity

Business Associate

Signed by: \_\_\_\_\_

Signed by: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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