

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) effective as of _____, 20__ (“Effective Date”) is entered into by and between _____ (“Business Associate”) and _____ (“Covered Entity”).

RECITALS

The purpose of this Agreement is to enable the parties to comply with the applicable requirements of HIPAA, the HIPAA Regulations and the HITECH Act (defined below) that involve Protected Health Information (“PHI”) (including but not limited to Electronic Protected Health Information (“ePHI”)) that is accessed, maintained, transmitted, used, created, received or disclosed by Business Associate (and/or any agent or Subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate or Covered Entity) in connection with services performed on behalf of Covered Entity pursuant to any oral or written agreement(s) for the provision of services to Covered Entity that has been or may be entered into (“Services Agreement”).

NOW THEREFORE, the parties agree as follows.

DEFINITIONS

Terms used, but not defined below, shall have the meaning as set forth in HIPAA, the HIPAA Regulations, HITECH provisions of the American Recovery and Reinvestment Act of 2009 (“Stimulus Act”), Title XIII and related regulations.

“**Administrative Safeguards**” means safeguards consisting of administrative actions, policies and procedures designed to protect the privacy of PHI from intentional or unintentional use or disclosure in violation of HIPAA and other legal requirements, and to manage the selection, development, implementation, and maintenance of security measures to protect Electronic PHI, as well as managing the conduct of the workforce relating to the protection of that information.

“**Availability**” means the property that data or information is accessible and useable upon demand by an authorized person, as set forth at 45 C.F.R. § 164.304.

“**Breach**” means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. For the purposes of reporting to the Covered Entity under this Agreement, Business Associate shall presume that any unauthorized acquisition, access, use or disclosure of PHI is a “Breach.” A Breach excludes:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and such information is not further acquired, accessed, used or disclosed in a manner not permitted under HIPAA, the HIPAA Regulations, or HITECH;

(ii) Any inadvertent disclosure by a person who is authorized to access PHI at a facility operated by Covered Entity or Business Associate to another person authorized to access PHI at the same facility, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under HIPAA, the HIPAA Regulations, or HITECH; or

(iii) A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

“**Breach Notification Regulations**” means the rules set forth primarily at set forth primarily at 45 C.F.R. Part 164, Subpart D.

“Business Associate” means the entity so designated in the preamble to this Agreement.

“Confidentiality” means the property that data or information is not made available or disclosed to unauthorized persons or processes, as set forth at 45 C.F.R. § 164.304.

“Covered Entities” or **“Covered Entity”** means the entity or entities as designated in the preamble to this Agreement.

“Discovery” or **“Discovery of a Breach”** means that Business Associate, or an employee, officer or agent of Business Associate, has acquired actual knowledge of a Breach or by the exercise of reasonable diligence should have acquired knowledge of a Breach.

“Electronic Protected Health Information,” “Electronic PHI.” or **“ePHI”** means PHI in electronic form. All references to “Protected Health Information” or “PHI” in this Agreement include ePHI.

“Encrypted” or **“Encryption”** means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, as set forth at 45 C.F.R. § 164.304.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 Pub. L. No. 104-191.

“HIPAA Regulations” means the Privacy Regulations, the Security Regulations, the Breach Notification Regulations and such other applicable regulations set forth in 45 C.F.R. Parts 160 and 164.

“HITECH” or **“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act privacy and security provisions of the Stimulus Act and implementing regulations.

“Identifiers” means the identifiers listed in the HIPAA Privacy Rule at 45 C.F.R. Section 164.514(b)(2), which include, among other identifiers: name, address, zip code, all elements of dates other than the year that directly relating to an individual (such as birthdate, admission date, discharge date, date of death), telephone numbers, email address, fax numbers, social security numbers, medical record numbers, vehicle identifiers, license numbers, and all other identifiers of an individual, or of the individual’s relatives, employers, or household members described in Section 164.514(b)(2).

“Individual” means the person who is the subject of PHI and shall include a person who qualifies as a personal representative under 45 C.F.R. Section 164.502(g).

“Integrity” means the property that data or information have not been altered or destroyed in an unauthorized manner, and that data from one system is consistently and accurately transferred to other systems, as set forth at 45 C.F.R. § 164.304.

“Physical Safeguards” means safeguards consisting of physical measures, policies, and procedures to protect electronic information systems and related buildings and equipment, from natural and environmental hazards and unauthorized intrusion.

“Protected Health Information” or **“PHI”** means individually identifiable health information created, maintained, transmitted or received by Business Associate from or on behalf of a Covered Entity that relates to the past, present, or future physical or mental health or condition of an Individual, the provision of health care to an Individual, or the past, present, or future payment for the provision of health care to an Individual, as set forth at 45 C.F.R. § 160.103. PHI can be oral, written, electronic, or recorded in any other form. All references to “Protected Health Information” or “PHI” in this Agreement include Electronic Protected Health Information (ePHI).

“Privacy Regulations” means the rules set forth primarily at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“Required by Law” means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law, as set forth at 45 C.F.R. § 164.103. Required by Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations

that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

“**Secretary**” or “**HHS Secretary**” means the Secretary of the Department of Health and Human Services (“HHS”).

“**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as set forth at 45 C.F.R. § 164.304. The term “Security Incident” is very broad and includes attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

“**Security Measures**” relates to the means (process and technology) by which a Covered Entity and/or Business Associate protect the privacy and security of information, as set forth at 45 C.F.R. § 164.304. Security Measures keep information secured, and decrease the means of tampering, destruction, or inappropriate access. Security Measures encompass all of the administrative, physical, and technical safeguards in an information system.

“**Security Regulations**” means the rules set forth primarily at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

“**Subcontractor**” means a person or entity to whom the Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of the Business Associate, whether by written agreement or otherwise.

“**Technical Safeguards**” means safeguards consisting of technology and the policy and procedures for the use of the technology that protect ePHI and control access.

“**Unsecured PHI**” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued under section 13402(h)(2) of HITECH on the HHS Web site.

1. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1.1 Business Associate agrees not to use or disclose PHI (“PHI”) except as permitted or required by this Agreement or as Required by Law. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

1.2 Business Associate and its agents or Subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in accordance with HIPAA, the HIPAA Regulations and HITECH.

1.3 Business Associate agrees to use appropriate safeguards and comply with the applicable requirements of the HIPAA Regulations, including 45 CFR Subpart C with respect to ePHI and Subpart E of 45 CFR with respect to PHI. This shall include, without limitation, using appropriate Security Measures and developing, implementing, maintaining and using appropriate and reasonable Administrative, Physical, and Technical Safeguards for the privacy and security of PHI to ensure the Integrity, Confidentiality and Availability of, and to prevent non-permitted uses and disclosures of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate further acknowledges and agrees that pursuant to HITECH it will implement and document its Security Measures and will comply with 45 C.F.R. sections 164.306 (Security Standards), 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Safeguards), and 164.316 (Policy and Procedures and documentation requirements), and all other applicable requirements of HIPAA, the HIPAA Regulations, HITECH and other applicable privacy and security laws. Business Associate agrees to adopt the technology and methodology standards provided in guidance issued by the HHS Secretary pursuant to HITECH.

1.4 Business Associate agrees to take prompt action to correct any deficiencies and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an access, use,

disclosure, modification or destruction of PHI by Business Associate, its agents or Subcontractors, if any, in violation of the requirements of this Agreement.

1.5 Business Associate agrees to promptly notify Covered Entity within forty-eight (48) hours of any access, use, disclosure, modification or destruction of PHI not provided for by this Agreement or that is in violation of the requirements of this Agreement, and to provide Covered Entity or its designee such information as may be reasonably requested by Covered Entity to investigate the violation. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. If Business Associate has been requested orally or in writing by law enforcement officials that notification of affected Individuals of a Breach may impede a criminal investigation, Business Associate shall so inform Covered Entity. In the event of a Breach of PHI caused by Business Associate or anyone acting on its behalf, Business Associate shall be responsible for all costs and expenses of responding to the Breach, including without limitation, the costs of notifying Individuals of the Breach. Nothing in this section shall limit any other rights or remedies of Covered Entity.

1.6 Business Associate further agrees to provide a report in writing to Covered Entity within ten (10) days of, and to cooperate with Covered Entity in investigating and resolving, any of the following as they relate to PHI under this Agreement:

- (i) Any unauthorized access, use, disclosure, modification or destruction of PHI of which Business Associate becomes aware;
- (ii) Any Security Incident of which Business Associate becomes aware; or
- (iii) Any Breach or potential Breach of Unsecured PHI of which Business Associate becomes aware. In such event, Business Associate will document its investigation and provide such additional information as may reasonably be requested to enable Covered Entity to determine the extent to which the PHI has been compromised. Notice to affected Individuals will be made by or at the direction of Covered Entity at Business Associate's expense.

The written report from Business Associate required by this Section shall set forth the following:

- (i) A brief description of what happened, including the date of any unauthorized access, use, disclosure, modification or destruction, and, if known, the date of Discovery, the number of individuals affected, the time period involved, and the nature and extent of any harm resulting from the violation;
- (ii) A description of the type(s) of PHI and Identifiers involved (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, and other types of information were involved);
- (iii) Information regarding whether and to what extent the PHI was Unsecured PHI, Encrypted, or was rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued under section 13402(h)(2) of HITECH on the HHS Web site;
- (iv) A description of the manner in which the PHI could be identified or, if known, how and whether the PHI could be re-identified;
- (v) To the extent possible, the name of each Individual whose PHI has been, or is reasonably believed to have been accessed, used, disclosed, modified or destroyed;
- (vi) To the extent possible, the name of the unauthorized person and entity who used the PHI or to whom the disclosure was made;
- (vii) To the extent possible, whether the unauthorized person or entity is another covered entity, business associate, employee of Business Associate, Subcontractor or entity affiliated with Business Associate;
- (viii) Whether any opportunity existed for an unauthorized person to acquire, view, transfer or otherwise compromise the PHI;
- (ix) Whether the PHI was actually acquired, viewed, transferred or otherwise compromised by an unauthorized person;

- (x) Any steps Individuals should take to protect themselves from potential harm resulting from the unauthorized access, use, disclosure, modification or destruction of PHI; and
- (xi) A description of what the Business Associate is doing to investigate, mitigate harm to Individuals, and protect against any further unauthorized access, use, disclosure, modification or destruction of PHI.

1.7 Business Associate agrees that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate or Covered Entity will enter into in an enforceable written HIPAA-compliant business associate agreement requiring that the Subcontractor:

(a) agrees to comply with the HIPAA Privacy Regulations, HIPAA Security Regulations, HITECH law, and other applicable state, Federal and local laws and regulations related to privacy and security of PHI, including ePHI;

(b) agrees to the same restrictions, reporting and contracting obligations, and conditions that apply in this Agreement to Business Associate with respect to PHI including, by way of example and without limitation, that the Subcontractor develop, implement, maintain and use appropriate and reasonable Security Measures and Administrative, Physical, and Technical Safeguards for the privacy and security of PHI to ensure the Integrity, Confidentiality and Availability of, and prevent non-permitted access, use, disclosure, modification or destruction of PHI, including ePHI; that the Subcontractor enter into business associate agreements with its subcontractors that create, receive, maintain or transmit PHI on behalf of Subcontractor, Business Associate or Covered Entity; and that the Subcontractor adopt a HIPAA compliance program and policies and procedures.

If Business Associate becomes aware of a pattern of activity or practice of a Subcontractor that constitutes a material breach of their written business associate agreement, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract.

1.8 Business Associate shall provide notice within ten (10) days of the receipt of a request from an Individual (or their authorized personal representative) for access to, amendment to, an accounting of disclosures of, a copy or electronic copy of, or a restriction on the use or disclosure of PHI.

1.9 Business Associate agrees to provide access to and copies of PHI maintained in a Designated Record Set to Covered Entity or, when requested in writing by Covered Entity, to an Individual in order for Covered entity to meet the requirements of 45 C.F.R. §164.524. Business Associate shall provide access to and copies of PHI in a reasonable time, not to exceed fifteen (15) days (unless the parties reasonably agree otherwise in writing) and in a reasonable manner. If requested by Covered Entity or an Individual, Business Associate shall provide access to ePHI to Covered Entity or, when requested in writing by Covered Entity, to an Individual in the electronic form and format requested by Covered Entity or by the Individual, as applicable, if it is readily producible and, if not, in a readable electronic form and format as agreed by the Covered Entity or Individual, as applicable.

1.10 Business Associate agrees to make its internal practices, books, and records 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 Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Regulations. Upon receipt of a request from the Secretary, Business Associate shall notify Covered Entity in writing unless such notification would be contrary to law.

1.11 Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity determines is required to enable Covered Entity to comply with 45 C.F.R. §164.526. Except for good cause shown in writing to Covered Entity, Business Associate shall act upon Covered Entity's request for an amendment within thirty (30) days of receipt Covered Entity's request.

1.12 Business Associate agrees to identify, track and document disclosures of PHI and other 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 45 C.F.R. §164.528. Business

Associate agrees to provide the information collected to Covered Entity or to an Individual when requested by Covered Entity, in writing and not later than thirty (30) days after receiving a request under this subsection, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Upon written request, Business Associate shall furnish to Covered Entity a copy of its policies or procedures that it has, and will maintain, that describe how it carries out its obligations under this subsection.

1.13 Business Associate agrees that if it has a legal obligation to disclose any PHI, it will notify Covered Entity as soon as reasonably practicable after it learns of such obligation, sufficiently in advance of the proposed release date such that the rights of Covered Entity and the Individual to whom the PHI relates would not be prejudiced. If Covered Entity or the Individual objects to the release of such PHI, Business Associate will allow Covered Entity and/or the Individual to exercise any legal rights or remedies Covered Entity and/or the Individual might have to object to the release of the PHI, and Business Associate agrees to provide such assistance as Covered Entity or the Individual may reasonably request in connection therewith.

2. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

2.1 General Use and Disclosure Provision. Business Associate agrees to use or disclose PHI only as permitted or required for the purpose of performing its obligations under the Services Agreement, provided such use or disclosure of PHI would not violate the HIPAA Regulations if done by Covered Entity, including the minimum necessary requirements in the HIPAA Regulations and Subpart E of 45 CFR Part 164, or violate the terms of this Agreement.

2.2 Specific Use and Disclosure Provisions:

- (i) Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that disclosures are Required By Law, or Business Associate obtains 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 notified the Business Associate of any instances of which it is aware in which the Confidentiality of the information has been breached.
- (ii) Only when specifically authorized by Covered Entity in writing separate from this Agreement or in accordance with a specific provision of the Services Agreement, Business Associate may use PHI: (a) to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B); or (b) to create de-identified health information in accordance with 45 C.F.R. §164.514.
- (iii) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

2.3 Offshore PHI Prohibition. Without express written consent from Covered Entity, Business Associate shall not, and shall ensure that its agents or Subcontractors shall not, a) disclose, transmit, create or maintain any PHI outside of the United States, or b) access, use, maintain, transmit, create, receive or disclose PHI while outside of the United States.

3. OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices, prepared for compliance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

3.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

3.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.4 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be effective as of the Effective Date, and shall terminate after the exercise of any of the termination provisions set forth below and when 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 and no copies of PHI are retained, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

4.2 Termination by Covered Entity. Covered Entity may immediately terminate this Agreement and any Services Agreement if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may provide Business Associate with thirty (30) days written notice of the existence of an alleged material breach and afford Business Associate an opportunity to cure upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity. Failure to cure in the manner set forth in this Section is grounds for the immediate termination of this Agreement and any Services Agreement. Nothing contained herein shall be deemed to require Covered Entity to terminate this Agreement if termination is not feasible.

4.3 Termination by Business Associate. If Business Associate makes the determination that a condition material to the performance of this Agreement has changed under any Services Agreement or this Agreement, or that Covered Entity has breached a material term of this Agreement, Business Associate may provide (30) days notice of its intention to terminate this Agreement and the Services Agreement. Business Associate agrees, however, to cooperate with Covered Entity find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as any Services Agreement is in effect.

4.4 Automatic Termination. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the last Service Agreement in effect between the parties.

4.5 Effect of Termination. Upon any termination pursuant to this Section or otherwise, Business Associate shall return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(ii)(J) if it is feasible to do so, and shall not retain any copies of the PHI. If return or destruction is not feasible, Business Associate will notify Covered Entity in writing, including: (i) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI, and (ii) the specific reason(s) for such determination, which reason(s) must be agreed to by Covered Entity. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. Business Associate further agrees to recover any PHI in the possession of its Subcontractors or agents and to return or destroy the PHI as set forth in this Section; if infeasible, Business Associate must provide a written explanation to Covered Entity and require the Subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the Subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5. INSURANCE AND INDEMNIFICATION

Business Associate shall maintain or cause to be maintained Professional / Technology Liability insurance and Network Security & Privacy Liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in connection with the services provided under this agreement, as well as all Business Associate costs, including damages it is obligated to pay Covered Entity or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Confidential or Personal Information, regardless of cause (including, without limitation, Vendor negligence or gross negligence and unlawful third party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Information was lost or compromised; (b) costs to provide credit monitoring and credit restoration services to individuals whose Personal Information was lost or compromised; (c) costs associated with third party claims arising from the Security Breach or loss of Personal Information, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. Such insurance shall provide coverage for up to \$10,000,000.00 (10 million dollars). For the purposes of this Section, " Security Breach" means (1) the failure by the Business Associate to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Business Associate of: (a) Personal Information in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Business Associate's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by Business Associate in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.

Business Associate shall indemnify, defend and hold harmless Covered Entity and its parent corporation, subsidiaries and related entities, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of any breach or alleged breach of the terms of this Agreement by Business Associate or any agent or Subcontractor of Business Associate.

Nothing herein shall limit any obligations of Business Associate to indemnify and provide insurance as set forth in the Services Agreement or otherwise, and no terms of the Services Agreement or any other agreement between the parties shall limit the requirements of this Section.

6. NOTICE

All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt of attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; (c) overnight delivery service with proof of delivery; or (d) facsimile with return facsimile acknowledging receipt. Except as otherwise herein provided notices shall be sent to the address below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity: _____

Attention: CEO

If to Business Associate:

7. AUDITS

Business Associate shall audit its compliance with the requirements of this Agreement at least annually during the term of this Agreement (and more frequently as needed in order to address operational or electronic systems changes) including without limitation, its Security Measures and its Administrative, Physical, and Technical Safeguards. Business Associate agrees that in the event of a Breach or other violation of this Agreement by Business Associate, or any agent or Subcontractor of Business Associate, Covered Entity may have an assessment of compliance conducted utilizing a third party designated by Covered Entity, at Business Associate's expense, and Business Associate shall reasonably cooperate with Covered Entity to implement corrective actions. When Covered Entity has a reasonable, good faith belief that there has been a Breach or other violation of this Agreement, Covered Entity may have such third party assessment conducted at Covered Entity's expense, and if a Breach or violation is found, Business Associate shall be responsible for the costs of the third party assessment, and shall reasonably cooperate with Covered Entity to implement corrective actions. Business Associate shall make such audits, assessments, and related documentation available for review by Covered Entity upon request. Nothing in this Section 7 shall limit any other rights or remedies of Covered Entity.

8. MISCELLANEOUS

8.1 Regulatory References. A reference in this Agreement to a section in the Code of Federal Regulations ("C.F.R.") means the section as in effect as of the effective date of this Agreement, or as thereafter amended.

8.2 Independent Contractor. The parties to this Agreement are independent contractors in carrying out the duties and obligations of this Agreement. This Agreement is not intended, and shall not be construed, to create any relationship between the parties that would allow one party to exercise direction or control over the manner or method by which the other party performs services, duties or obligations under this Agreement.

8.3 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 and Business Associate to comply with legal requirements including, without limitation, the requirements of HIPAA, the HIPAA Regulations and the HITECH Act. Except as provided specifically herein, this Agreement may not be modified or amended except by an instrument in writing declared to be an amendment hereto and executed by both parties.

8.4 Survival. The respective rights and obligations of each party under Sections 1.4, 1.5, 1.6, 1.8, 1.10, 4, 5, 6, 7, 8.4, 8.8, and 8.10 of this Agreement shall survive the termination of this Agreement.

8.5 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, the applicable HIPAA Regulations, the HITECH Act and related statutory provisions and regulations.

8.6 No Third Parties. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns. There are no third parties to this Agreement and nothing herein is intended for the benefit of a third person.

8.7 Coordination of Documents. In the event of a conflict between a provision of this Agreement and a provision of a Services Agreement, the provision of this Agreement shall control.

8.8 Choice of Law. This Agreement shall be governed and construed by applicable federal law and by the laws of the state where Covered Entity is physically located without regard to laws relating to choice of law or conflicts of law.

8.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties on this subject matter and supersedes all other proposals, understandings or agreements, whether written or oral, regarding the subject matter hereof, including any prior Business Associate Agreement.

8.10 Disputes. If any controversy, dispute, or claim arises between the parties with respect to this agreement, the parties shall make good faith efforts to resolve such matters informally.

8.11 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the statutes and regulations cited herein will be adequate or satisfactory for Business Associate's own purposes. Business associate is solely responsible for adequately safeguarding PHI in accordance with applicable law.

9. FURTHER ASSURANCES

The parties agree that from time to time they will amend the Agreement to account for changes in the applicable law or regulations including, without limitation, those arising out of the HITECH Act or other applicable acts and regulations subsequently promulgated and that, on and after the effective date of this Agreement, such then applicable provisions shall be incorporated by reference into the Agreement as written until such time as the parties may amend the Agreement to otherwise specifically provide for the subject matter of such provisions but in no case for a period longer than one year from the effective date of any such statutory or regulatory provision, during which time the parties shall negotiate further assurances in good faith.

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of the _____ day of _____ 20____.

_____(BUSINESS ASSOCIATE)

By: _____

Name & Title: _____

Date: _____

_____(COVERED ENTITY)

By: _____

Name & Title: _____

Date: _____