

BUSINESS ASSOCIATE AGREEMENT¹

This Business Associate Agreement (“Agreement”), effective as of the _____ day of _____, 200__, is entered into by and between _____, a _____ (“Covered Entity”) and _____ (“Business Associate”)

WHEREAS, in conjunction with the provision of certain healthcare services, Covered Entity receives and creates certain individually identifiable health information (“Protected Health Information”) the creation, transmission, disclosure and dissemination of which must be protected as confidential information;

WHEREAS, in conjunction with the provision of certain healthcare services to Covered Entity under an agreement dated the _____ day of _____, _____, (“Original Contract”) Business Associate has access to and is involved in the creation, transmission, disclosure and dissemination of such Protected Health Information.

WHEREAS, the Covered Entity and Business Associate wish to comply with the provisions of 45 C.F.R. §160.101 et seq. (“Privacy Regulations”) and 45 C.F.R. §164.308 et seq. (“Security Regulations”) regarding the appropriate use and disclosure of Protected Health Information;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and Business Associate hereby agree as follows:

1. **Definitions.** The terms used in this Business Associate Agreement (“Agreement”) shall have the same meaning as those terms are used in HIPAA, 45 CFR § 160 et seq. and 45 CFR § 164.308 et seq.

2. **Permitted uses and Disclosures of Protected Health Information.** Business Associate will not use or further disclose any Protected Health Information except in the provision of services to Covered Entity as specifically authorized under the Original Contract, including without limitation any use or disclosure which would violate the provisions of the Privacy Regulations. Notwithstanding the foregoing, Business Associate may use and disclose Protected Health Information to provide data aggregation services related to the healthcare operations of Covered Entity. Business Associate may also use and disclose Protected Health Information in the proper management and administration of Business Associate and to carry out its legal responsibilities, provided

¹ The entities must enter into a memorandum of understanding with the business associate that contains terms that accomplish the objectives of paragraph (a) (2)(i) of section §164.314 or if other law contains requirements applicable to the business associate that accomplish the objectives of paragraph (a)(2)(i) of section §164.314

that the use and disclosure is either required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 notifies Business Associate of any instances of which it is aware in which the confidentiality of information has been breached.

3. **Responsibilities of Business Associate.** Business Associate will:

- (a) Not use or further disclose Protected Health Information other than as permitted or required by the Original Contract or as required by law, including without limitation, the Privacy Regulations and any applicable State law;
- (b) Use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for in the Original Contract;
- (c) Implement administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (d) Report to Covered Entity any use or disclosure of Protected Health Information not provided for in the Original Contract of which it becomes aware;
- (e) Ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, the Covered Entity agrees to the same restrictions and conditions that apply to Business Associate with respect to Protected Health Information. Further any agent or subcontractor must agree to implement reasonable and appropriate safeguards to protect electronic protected health information.
- (f) Make available for inspection and copying Protected Health Information to an individual about such individual in accordance with 45 C.F.R § 164.524;
- (g) Make available Protected Health Information to an individual about such individual for amendment and incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. § 164.526;
- (h) Make available Protected Health Information required to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528;
- (i) Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of HHS to whom the authority involved has been delegated for purposes of determining the Covered Entity's compliance with privacy Regulations; and
- (j) At termination of the Original Contract, if feasible, return all Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associates still maintains in any form and retain no copies of such Protected Health information or, if return is not feasible, extend the protections of the Original Contract and this Agreement to the information and limit further uses and disclosures to those purposes that make the return of the protected Health Information infeasible.

4. Other Arrangements

- (a) If a business associate is required by law to perform a function or activity on behalf of a covered entity or to provide a service described in the definition of business associate as specified in §160.103 of this subchapter to a covered entity, the covered entity may permit the business associate to create, receive, maintain or transmit electronic protected health information on its behalf to the extent necessary to comply with the legal mandate without meeting the requirements of (a) (2) (1) of §164.314, provided that the covered entity attempts in good faith to obtain satisfactory assurances as required by paragraph (a)(2)(ii)(A) of §164.314, and documents the attempt and the reasons that these assurances cannot be obtained.
- (b) The covered entity may omit from its other arrangements authorization of the termination of the contract by the covered entity, as required by paragraph (a)(2)(i)(D) of §164.314 if such authorization is inconsistent with the statutory obligations of the covered entity or its business associate.

- 5. **Termination of Agreement.** This Agreement and the Original Contract may be terminated by Covered Entity if Covered Entity determines that Business Associate has violated a material term of this Agreement. The provisions of Paragraphs 1 and 2 hereof shall survive any termination of this Agreement and/or the Original Contract.
- 6. **Miscellaneous.** This Agreement contains the final and entire agreement of the parties and supersedes all prior and/or contemporaneous understandings and may not be modified or amended unless such modification is in writing and signed by both parties and their successors, administrators and permitted assigns. All personal pronouns used in this Agreement whether used in masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa. Titles of Paragraphs are utilized for convenience only and neither limit nor amplify the provisions of this Agreement itself. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Group Health Plans Addendum

Except when the only electronic protected health information disclosed to a plan sponsor is disclosed pursuant to §164.504(f)(1)(ii) or (iii), or as authorized under §164.508, a group health plan must ensure that its plan documents provide that the plan sponsor will reasonably and appropriately safeguard electronic protected health information created, received, maintained, or transmitted to or by the plan sponsor on behalf of the group health plan.

The plan documents of the group health plan must be amended to incorporate provisions to require the plan sponsor to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains or transmits on behalf of the group health plan; (ii) ensure that the adequate separation required by §164.504(f)(2)(iii) is supported by reasonable and appropriate security measures; (iii) ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect information; and (iv) report to the group health plan any security incident of which it becomes aware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____