

This Agreement is made effective the _____ day of _____, 20 ____ by and between _____, hereinafter referred to as "Covered Entity," and _____, hereinafter referred to as "Business Associate" or "Vendor," (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, known as "the Administrative Simplification provisions;" direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule (the agreement evidencing such arrangement is entitled Legal Services Agreement, dated _____, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

I. DEFINITIONS

- a. Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.
- b. The term "Protected Health Information" (PHI) means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation. Demographic, medical, and financial information 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: and that identifies the individual or with respect to which there is a reasonable basis to believe the information

- can be used to identify the individual. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.
- c. The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.
 - d. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

II. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTIVE HEALTH INFORMATION

- a. Business Associate agrees:
 - i. to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule, and (3) as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity;
 - ii. at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and
 - iii. to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information which is Electronic Protected Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.
- b. Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:
 - i. if necessary, for the proper management and administration of Business Associate

or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

- A. the disclosure is required by law; or
 - B. 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 the information has been breached; for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services mean the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
 - C. Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.
- c. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, "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. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
 - d. Business Associate agrees to make available all records, books, agreements, policies and procedures related to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy Rule.
 - e. Covered Entity agrees:
 - i. to obtain any patient consent or authorization that may be required by the Privacy rule or applicable state law prior to furnishing Vendor protected health information
 - ii. that it will not furnish Vendor Protected Health Information that violates any restrictions on use and/or disclosure as provided for in 45 C.F.R. §164.522 and agreed to by Covered Entity: pertaining to an individual.

- iii. to notify Vendor, in writing, of any Protected Health Information in Vendor's possession that Covered Entity seeks to make available to a patient pursuant to 45 C.F.R. §164.524 and agree with Vendor as to the time, manner and form in which Vendor shall provide such access; and
- iv. to notify Vendor, in writing, of any amendment(s) to the Protected Health Information in the possession of Vendor that Covered Entity believes are necessary because of its belief that the Protected Health Information that is the subject of the amendment(s) has been or could be relied upon by Vendor or others to the detriment of the individual who is the subject of the Protected Health Information.

III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule.

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, either party shall have the right to terminate this Agreement and the Arrangement Agreement immediately if that party determines that the other party has violated any material term of this Agreement. Alternatively, either party may choose to provide the other with ten (10) days written notice of the existence of an alleged material breach and afford the breaching party an opportunity to cure. Nonetheless, in the event a mutually agreeable terms cannot be achieved; the breaching party must cure said breach or the agreement shall be terminated. If either party reasonably believes that the other will violate a material term of this Agreement in the future, and where practicable, gives written notice to the other party of such belief, and the other party fails to provide adequate written assurances that it will not breach this agreement, then the party believing that a breach will occur shall have the right to terminate this agreement and the Arrangement Agreement as provided herein.

V. MISCELLANEOUS

- a. Except as expressly stated herein or the HIPAA Security and Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents,

- employees, contractors, successors, and assigns as set forth herein.
- b. This Agreement may be amended or modified only in writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they 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 other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the state of . No change, waiver or discharge of any liability or obligation here under 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 other occasion.
 - c. The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associates use and disclosure of Protected Health Information.
 - d. 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 will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply, with the then-current requirements of the HIPAA Security and Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary, to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, then either party has the right to terminate upon written notice to the other party.
 - e. The parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this Agreement to give effect to any amendment to any provision of HIPAA, or its implementing regulations set forth at 45 C.F.R. parts 160 through 164, or any new privacy or security requirements imposed under state or federal law, which materially alters either Party's or both Parties' obligations under this Agreement; provided, however, that if the Parties are unable to agree on mutually acceptable amendment(s) within thirty (30) days of the relevant change of law, either party may terminate this Agreement consistent with section IV.

WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.



Covered Entity

Name:

Address

City/State/Zip:

Telephone:

Facsimile:

Email:

By:

Business Associate

Name:

Address:

City/State/Zip:

Telephone:

Facsimile:

Email:

By:
