



# BUSINESS ASSOCIATE AGREEMENT

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This Agreement is made effective \_\_\_\_/\_\_\_\_/\_\_\_\_ by and between the Arkansas Department of Health, hereinafter referred to as "Covered Entity", and \_\_\_\_\_, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act 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 Privacy Rule" and the "HIPAA Security Rule"); and

WHEREAS, Title XIII of the American Recovery and Reinvestment Act, known as "the HITECH Act" has amended HIPAA and the HIPAA regulations, including HIPAA's Administrative Simplification provisions; 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 Privacy Rule; and

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

THEREFORE, in consideration of the Parties' continuing obligations under the HIPAA Privacy Rule and Security Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and Security Rule and to protect the interests of both Parties.

## I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule and the HIPAA Security Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule and Security Rule, as amended, the HIPAA Privacy Rule and Security Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule and Security Rule, but are nonetheless permitted by the HIPAA Privacy Rule and/or Security Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" (abbreviated as "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.



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. CONFIDENTIALITY REQUIREMENTS**

(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, or the HIPAA Privacy Rule or Security Rule;

(ii) at termination of this 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 in perpetuity 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. 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 or the mandatory requirements of the HIPAA Privacy Rule and Security Rule that may apply to Business Associate.

(1) 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, not merely permitted by law; or

(b) Business Associate obtains reasonable written assurances from the person or party 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 or party, and the person or party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;



(ii) 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 means 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. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to uses and disclosures of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule and Security Rule. Business Associate shall timely 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.

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- (a) Business Associate agrees that it is required under the amended HIPAA regulations to comply with, and shall comply with, the HIPAA Security Rule, including the Security Rule's Administrative, Physical, and Technical safeguard requirements.
- (b) Business Associate agrees that it is required under the amended HIPAA regulations to comply with, and shall comply with, the use and disclosure provisions of the HIPAA Privacy Rule.
- (c) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- (d) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (e) 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.
- (f) Business Associate agrees to and/or accepts any and all civil money penalties pursuant to 45 CFR Parts 160 through 164 et seq.
- (g) Breach Disclosures to Covered Entity: Business Associate agrees to immediately report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware. Further, Business Associate agrees to notify the Covered Entity of any individual who's Protected Health Information has been inappropriately or unlawfully released, accessed, or obtained. Business Associate agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations. Specifically, the following shall apply:
  - i. A breach is considered discovered on the first day the Business Associate knows or should have known about it.
  - ii. In no case shall the Business Associate notify the Covered Entity of any breach later than five (5) days after a breach is discovered.
  - iii. Business Associate shall notify the Covered Entity of any and all breaches of Protected Health Information, and provide detailed information to the Covered Entity about the



breach, along with the names and contact information of all individuals whose Protected Health Information was involved.

- iv. For breaches determined to be caused by the Business Associate, where such breaches require notifications to patients or consumers, the cost of such breach notifications shall be borne by the Business Associate.
- (h) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information 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 such information.
- (i) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (j) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner
- (k) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, 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 Covered Entity or to the Secretary, in a time and manner or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy Rule and Security Rule.
  - i. Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR § 164.528.
  - ii. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner information collected in accordance with Section III(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

#### **IV. AVAILABILITY OF PROTECTED HEALTH INFORMATION**

- (a) Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule.
- (b) 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 Privacy Rule.
- (c) 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 Privacy Rule.

#### **V. TERMINATION**

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to



Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement immediately.

## **VI. MISCELLANEOUS**

Except as expressly stated herein or in the HIPAA Privacy Rule or Security 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, 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.

This Agreement may be amended or modified only in a 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 shall be governed by the laws of the State of Arkansas. 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 other occasion. 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 Associate's use and disclosure of Protected Health Information.

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 Privacy Rule or Security 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 requirements of the HIPAA Privacy Rule and Security Rule, then either party has the right to terminate upon written notice to the other party.

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

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_

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

*Business/Entity:* \_\_\_\_\_