

## BUSINESS ASSOCIATE AGREEMENT

The parties to this Attachment agree that the following provisions constitute a business associate agreement for purposes of complying with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This Attachment is applicable if the Recipient is a business associate within the meaning of the Privacy and Security Regulations, 45 C.F.R. 160 and 164.

The Recipient certifies and agrees as to abide by the following:

1. Definitions. Unless specifically stated in this Attachment, the definition of the terms contained herein shall have the same meaning and effect as defined in 45 C.F.R. 160 and 164.
  - a. Protected Health Information. For purposes of this Attachment, protected health information shall have the same meaning and effect as defined in 45 C.F.R. 160 and 164, limited to the information created, received, maintained or transmitted by the Recipient from, or on behalf of, the Agency.
  - b. Security Incident. For purposes of this Attachment, 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 and includes any event resulting in computer systems, networks, or data being viewed, manipulated, damaged, destroyed or made inaccessible by an unauthorized activity.
2. Applicability of HITECH and HIPAA Privacy Rule and Security Rule Provisions. As provided by federal law, Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), also known as the Health Information Technology Economic and Clinical Health (HITECH) Act, requires a Business Associate (Recipient) that contracts with the Agency, a HIPAA covered entity, to comply with the provisions of the HIPAA Privacy and Security Rules (45 C.F.R. 160 and 164).
3. Use and Disclosure of Protected Health Information. The Recipient shall comply with the provisions of 45 CFR 164.504(e)(2)(ii). The Recipient shall not use or disclose protected health information other than as permitted by this Contract or by federal and state law. The sale of protected health information or any components thereof is prohibited except as provided in 45 CFR 164.502(a)(5). The Recipient will use appropriate safeguards to prevent the use or disclosure of protected health information for any purpose not in conformity with this Contract and federal and state law. The Recipient will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information the Recipient creates, receives, maintains, or transmits on behalf of the Agency.

4. Use and Disclosure of Information for Management, Administration, and Legal Responsibilities. The Recipient is permitted to use and disclose protected health information received from the Agency for the proper management and administration of the Recipient or to carry out the legal responsibilities of the Recipient, in accordance with 45 C.F.R. 164.504(e)(4). Such disclosure is only permissible where required by law, or where the Recipient obtains reasonable assurances from the person to whom the protected health information is disclosed that: (1) the protected health information will be held confidentially, (2) the protected health information will be used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and (3) the person notifies the Recipient of any instance of which it is aware in which the confidentiality of the protected health information has been breached.
5. Disclosure to Third Parties. The Recipient will not divulge, disclose, or communicate protected health information to any third party for any purpose not in conformity with this Contract without prior written approval from the Agency. The Recipient shall ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Recipient on behalf of, the Agency agrees to the same terms, conditions, and restrictions that apply to the Recipient with respect to protected health information. The Recipient's subcontracts shall fully comply with the requirements of 45 CFR 164.314(a)(2)(iii).
6. Access to Information. The Recipient shall make protected health information available in accordance with federal and state law, including providing a right of access to persons who are the subjects of the protected health information in accordance with 45 C.F.R. 164.524.
7. Amendment and Incorporation of Amendments. The Recipient shall make protected health information available for amendment and to incorporate any amendments to the protected health information in accordance with 45 C.F.R. 164.526.
8. Accounting for Disclosures. The Recipient shall make protected health information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528. The Recipient shall document all disclosures of protected health information as needed for the Agency to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. 164.528.
9. Access to Books and Records. The Recipient shall make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the Recipient on behalf of the Agency, available to the Secretary of the Department of Health and Human Services ("HHS") or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations.
10. Reporting. The Recipient shall make a good faith effort to identify any use or disclosure of protected health information not provided for in this Contract.
  - a. To Agency. The Recipient will report to the Agency, within ten (10) business days of discovery, any use or disclosure of protected health information not provided for in this Contract of which the Recipient is aware. The Recipient will report to the Agency, within twenty-four (24) hours of discovery, any security incident of which the Recipient is aware. A violation of this paragraph shall be a material violation of this Contract. Such notice shall include the identification of each individual whose unsecured

- protected health information has been, or is reasonably believed by the Recipient to have been, accessed, acquired, used, or disclosed during such breach.
- b. To Individuals. In the case of a breach of protected health information discovered by the Recipient, the Recipient shall first notify the Agency of the pertinent details of the breach and upon prior approval of the Agency shall notify each individual whose unsecured protected health information has been, or is reasonably believed by the Recipient to have been, accessed, acquired, used or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient, or out-of-date contract information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the Web site of the covered entity involved or notice in major print or broadcast media, including major media in the geographic areas where the individuals affected by the breach likely reside. In any case deemed by the Recipient to require urgency because of possible imminent misuse of unsecured protected health information, the Recipient may also provide information to individuals by telephone or other means, as appropriate.
- c. To Media. In the case of a breach of protected health information discovered by the Recipient where the unsecured protected health information of more than 500 persons is reasonably believed to have been, accessed, acquired, used, or disclosed, after prior approval by the Agency, the Recipient shall provide notice to prominent media outlets serving the State or relevant portion of the State involved.
- d. To Secretary of Health and Human Services (HHS). The Recipient shall cooperate with the Agency to provide notice to the Secretary of HHS of unsecured protected health information that has been acquired or disclosed in a breach.
- (i) Recipients Who Are Covered Entities. In the event of a breach by a contractor or subcontractor of the Recipient, and the Recipient is a HIPAA covered entity, the Recipient shall be considered the covered entity for purposes of notification to the Secretary of HHS pursuant to 45 CFR 164.408. The Recipient shall be responsible for filing the notification to the Secretary of HHS and will identify itself as the covered entity in the notice. If the breach was with respect to 500 or more individuals, the Recipient shall provide a copy of the notice to the Agency, along with the Recipient's breach risk assessment for review at least 15 business days prior to the date required by 45 C.F.R. 164.408 (b) for the Recipient to file the notice with the Secretary of HHS. If the breach was with respect to less than 500 individuals, the Recipient shall notify the Secretary of HHS within the notification timeframe imposed by 45 C.F.R. 164.408(c) and shall contemporaneously submit copies of said notifications to the Agency.
- e. Content of Notices. All notices required under this Attachment shall include the content set forth Section 13402(f), Title XIII of the American Recovery and Reinvestment Act of 2009 and 45 C.F.R. 164.404(c), except that references therein to a "covered entity" shall be read as references to the Recipient.

f. Financial Responsibility. The Recipient shall be responsible for all costs related to the notices required under this Attachment.

11. Mitigation. Recipient shall mitigate, to the extent practicable, any harmful effect that is known to the Recipient of a use or disclosure of protected health information in violation of this Attachment.

12. Termination. Upon the Agency's discovery of a material breach of this Attachment, the Agency shall have the right to assess liquidated damages as specified elsewhere in the contract to which this Contract is an attachment, and/or to terminate this Contract.

a. Effect of Termination. At the termination of this Contract, the Recipient shall return all protected health information that the Recipient still maintains in any form, including any copies or hybrid or merged databases made by the Recipient; or with prior written approval of the Agency, the protected health information may be destroyed by the Recipient after its use. If the protected health information is destroyed pursuant to the Agency's prior written approval, the Recipient must provide a written confirmation of such destruction to the Agency. If return or destruction of the protected health information is determined not feasible by the Agency, the Recipient agrees to protect the protected health information and treat it as strictly confidential.

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The Recipient has caused this Exhibit to be signed and delivered by its duly authorized representative, as of the date set forth below.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Authorized Signer