

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”), entered into and effective this _____ day of _____, 2010, is by and between _____ (“Business Associate”) and _____ (“_____”); and shall be collectively known herein as the “Parties”.

WHEREAS, ___ wishes to commence a business relationship with “Business Associate” as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including all pertinent regulations, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“the HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and

WHEREAS, the nature of the prospective contractual relationship between ___ and Business Associate may involve the exchange of Protected Health Information (“PHI”) as defined under HIPAA; and

For good and lawful consideration ___ and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, and the HITECH Act.

In consideration of the premises and promises contained herein, it is mutually agreed by and between ___ and its Business Associates as follows:

I. DEFINITIONS

- A. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- B. Breach. “Breach” shall have the same meaning as the term “breach” in 13400 of the HITECH Act and shall include the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.
- C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR 164.501.
- D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and B, as amended by the HITECH Act and as may otherwise be amended from time to time.

- E. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of ____.
- F. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- G. Secretary. "Secretary" shall mean the "Secretary of the U. S. Department of Health and Human Services" or his designee.
- H. Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the 13402(h) of the HITECH Act.

II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

- A. Except as otherwise limited in this Agreement, Business Associates may use or disclose PHI to perform functions, activities, or services for, or on behalf of ____, provided that each use or disclosure would not violate the Privacy Rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR 164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as ____.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- B. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of ____.
- C. Business Associate shall immediately notify ____ of any use or disclosure of PHI in violation of this Agreement.
- D. Business Associates shall orally notify ____ of a Breach of Unsecured PHI within 5 business days of Business Associate's (or Business Associate's employee, officer, or agent) discovery of such Breach, followed by a report in writing, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Business Associate's written notification to ____ hereunder shall:
 - 1. Be made to ____ within 5 business days of the initial oral report,

2. Include the individual whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach, and
 3. Be in substantially the same form as EXHIBIT A hereto.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate to the extent practicable any harmful effects of said disclosure that are known to it.
 - F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI, received from, or created or received by Business Associate on behalf of ____, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
 - G. To the extent applicable, Business Associate shall provide access to PHI in a Designated Record Set at reasonable times, at the request of ____ or, as directed by ____ to an Individual in order to meet the requirements under 45 CFR 164.524.
 - H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that ____ directs or agrees to pursuant to 45 CFR 164.526 at the request of ____ or an Individual.
 - I. Business Associate shall, upon request with reasonable notice, provide ____ access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
 - J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for ____ to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Should an Individual make a request to ____ for an accounting of disclosures of his or her PHI pursuant to 45 CFR 164.528, Business Associate agrees to promptly provide ____ with information in a format and manner sufficient to respond to the individual's request.
 - K. Business Associate shall upon request with reasonable notice, provide ____ with an accounting of uses and disclosures of PHI provided to it by ____.
 - L. Business Associate shall make its internal practices, books, records, and any other material request by the Secretary relating to the use, disclosure, and safeguarding of PHI received from ____ available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to ____ that seeks documents or other information held by Business Associate.

- M. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR 164.502(j)(1).
- N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, 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 notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the date first above written and shall terminate when all of the PHI provided by ___ to Business Associate, or created or received by Business Associate on behalf of ___, is destroyed or returned to ___, 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 IV.
- B. Termination for Cause. Upon ___'s knowledge of a material breach by Business Associate, ___ shall:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by ___, terminate this Agreement;
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, report the violation to the Secretary.
- C. Effect of Termination.
 - 1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from ___, or created or received by Business Associate on behalf of ___. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to ___ written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
3. Should Business Associate make a disclosure of PHI in violation of this Agreement, ___ shall have the right to immediately terminate any contract other than this Agreement, then in force between the Parties.

V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by ___ in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to ___, and to the business of ___, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Section II or III above, ___ shall be entitled to restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, ___ is entitled to reimbursement and indemnification from Business Associate for ___'s reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associates breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy ___ may have for breach of any part of this Agreement.

VII. MODIFICATION

This Agreement may only be modified through a written document signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for ___ to comply with the requirements of the Privacy Rule and HIPAA.

VIII. INTERPRETATION OF THIS CONTRACT IN RELATION TO OTHER CONTRACTS BETWEEN THE PARTIES

Should there be any conflict between the language of this contract and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from ____, it becomes a holder of health records information and is subject to the provisions of Arizona law. If the HIPAA Privacy or Security Rules and the laws of Arizona conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit ____ to comply with the Privacy Rule.
- B. Regulatory Reference. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- C. Notice to ____. Any notice required under this Agreement to be given to ____ shall be made in writing to:
3800 N. Central, 9th Floor
Phoenix, AZ 85012
Attention: Privacy Officer
602-277-2144
- D. Notice to Business Associate. Any notice required under this Agreement to Business Associate shall be made in writing to Business Associate's address on file with ____ at the time said Notice is required.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing,
the Parties affix their signatures hereto.

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

FORM OF NOTIFICATION TO (_____) OF
BREACH OF UNSECURED PHI

NOTIFICATION TO _____
ABOUT A
BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section IIID(3) of the Business Associate Agreement between
- _____ (“_____”), and
- _____ (“Business Associate”)

Business Associate hereby notifies ___ that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____

Date of the discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, social security number, date of birth, home address, account number, etc.) _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information to ask questions or obtain additional information:

Name: _____

Title: _____

Address: _____

Email address: _____

Phone Number: _____