

## HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”), entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between \_\_\_\_\_ (“Business Associate”) and Black, Gould & Associates, Inc. (“BGA”); and shall be collectively known herein as the “Parties”.

WHEREAS, BGA 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 relationship between BGA and Business Associate may involve the exchange of PHI (“PHI”) as defined under HIPAA; and

The Parties hereby agree as follows:

### **I. DEFINITIONS**

#### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.

Unless otherwise specified in this Agreement, all capitalized terms used in this Agreement not otherwise defined have the meaning established for purposes of Title 45 parts 160 and 164 of the United States Code of Federal Regulations, as amended from time to time.

#### Specific definitions:

- A. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- B. BGA. “BGA” shall generally have the same meaning as the term “BGA” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean BGA.
- C. PHI. “PHI” shall mean PHI, as defined in 45 C.F.R. 164.501, limited to the information received from or created or received on behalf of BGA.
- D. ePHI - ePHI shall mean electronic protected health information that is produced, saved, transferred or received in an electronic form.
- E. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

- E. Designated Record Set. “Designated Record Set” means any item, collection, or grouping of information that includes PHI (as defined herein) and is maintained, collected, used or disseminated by or for BGA.

## II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- A. Not use or disclose Protected Health Information (PHI to hereinafter include electronic PHI) other than as permitted or required by the Agreement or as required by law; 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 BGA, provided that each use or disclosure would not violate the Privacy Rule. Business Associate must obtain reasonable assurances from any 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.
- B. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Agreement. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of that it creates, receives, maintains or transmits on behalf of BGA.
- C. Report to BGA immediately any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.
- D. Business Associate shall orally notify BGA of a Breach of Unsecured PHI within 24 hours 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 BGA hereunder shall:
1. Be made to BGA within 48 hours of the initial oral report, and
  2. Include the individual whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of unsecured PHI or ePHI, Business Associate shall mitigate to the extent practicable any harmful effects of said disclosure that are known to it;
- F. In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e), and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI, on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to

such information;

- G. Within 7 days of request, make available PHI in a Designated Record Set to BGA as necessary to satisfy BGA's obligations under 45 CFR 164.524;
- H. Make any amendment to PHI or in a Designated Record Set as directed or agreed to by BGA pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy BGA's obligations under 45 CFR 164.526;
- I. Maintain and make available, within 7 days after a request for such information, the information required to provide an accounting of disclosures to BGA as necessary to satisfy BGA's obligations under 45 CFR 164.528;
- J. To the extent the Business Associate is to carry out one or more of BGA's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to BGA in the performance of such obligation(s);
- K. With respect to any use, disclosure or request for PHI described in 45 CFR 502(b)(1), Business Associate shall limit the PHI to the extent practicable to the limited data set as defined in 45 CFR 164.514(e)(2) or, if needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request;
- L. Make its internal practices, books, and records available to BGA for purposes of determining compliance with the HIPAA Rules; and
- M. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and as required by law, to the same extent as BGA.

### **III. PROVISIONS FOR BGA TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

- A. BGA shall notify Business Associate of any limitation(s) in the notice of privacy practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. BGA shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. BGA shall notify Business Associate of any restriction on the use or disclosure of PHI that BGA has agreed to for an individual to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

### **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 BGA to Business Associate, or created or received by Business Associate on behalf of BGA, is destroyed or returned to BGA, 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 BGA's knowledge of a material breach by Business Associate, BGA 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 BGA, 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 BGA, or created or received by Business Associate on behalf of BGA. 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 BGA 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, BGA shall have the right to immediately terminate any contract other than this Agreement, then in force between the Parties.

## **V. REMEDIES IN EVENT OF BREACH**

Business Associate hereby recognizes that irreparable harm will result to BGA, and to the business of BGA, 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, BGA 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, BGA is entitled to reimbursement and indemnification from Business Associate for BGA'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 BGA may have for breach of any part of this Agreement.

**VI. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from BGA, 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.

**VII. MISCELLANEOUS**

- A. Interpretation. Any ambiguity in this Agreement shall be resolved to permit BGA 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. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of HIPAA Rules and any other applicable law.
- D. Survival. The respective rights and obligations of Business Associate and BGA under the provisions of this Agreement shall survive the termination of the Agreement.
- E. Notice to BGA. Any notice required under this Agreement to be given to BGA shall be made in writing to:

3800 N. Central, 9th Floor  
 Phoenix, AZ 85012  
 Attention: Privacy Officer  
 602-277-2144

- F. 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 BGA at the time said Notice is required.

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

BLACK, GOULD & ASSOCIATES, INC.:

BUSINESS ASSOCIATE:

By: *Kristy Galligan*

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

Name: Kristy Galligan

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

Title: Privacy Officer

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

Date: March 6, 2020

Date: \_\_\_\_\_