**Business Associate Agreement**

***Between***

**\_\_\_\_\_\_\_\_\_\_\_ (Covered Entity) and \_\_\_\_\_\_\_\_\_\_\_\_(Business Associate)**

This **Business Associate** **Agreement** (Agreement) is made and entered into effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as “**Covered Entity**,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,** hereinafter referred to as “**Business Associate.**” The **Business Associate** subject to this Agreement provides \_\_\_\_\_\_\_\_\_\_\_\_ services to the **Covered Entity.** In consideration of the mutual promises below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose of this Business Associate Agreement:**

Pursuant to the provisions enacted under HIPAA and HITECH (both of which are defined in the section below), **Covered Entities** and **Business Associates** must enter into a contract (also known as a **“Business Associate Agreement”**) between themselves and with other **Business Associates** (which is defined under the HIPAA Omnibus Rule to include **“Subcontractors”**). Collectively, these statutes are designed to better ensure that patient Protected Health Information (PHI) is appropriately safeguarded from improper disclosure or breach.

This **Business Associate Agreement** also serves to clarify and limit, as appropriate, the permissible uses and disclosures of PHI by a **Business Associate,** based on the relationship between the parties and the activities or services being performed by the **Business Associate.**

A **Business Associate** may use or disclose PHI only as permitted or required under the terms of this **Business Associate Agreement** or as required by law.  A **Business Associate** may be liable under both HIPAA and HITECH for civil and/or criminal penalties if the **Business Associate** uses and/or discloses PHI in a fashion that is not authorized under this **Business Associate Agreement** or as otherwise required by law. A **Business Associate** may also be liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.

**II. Definitions:**

Terms used in this Agreement that are specifically defined in HIPAA shall have the same meaning as set forth in HIPAA. A change to HIPAA which modifies any defined HIPAA term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

1. **“Business Associate”** shall have the same meaning as the term “business associate” at 45 CFR § 160.103. A “business associate” is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information.  Pursuant to the HIPAA Omnibus Rule, the term “business associate” is also meant to describe a “subcontractor” that creates, receives, maintains, or transmits PHI on behalf of another business associate.

2. **“Covered Entity”** shall have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, is meant to refer to **(Health Care Provider Serving as Covered Entity).**

3. **“Data Aggregation”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

4. **“Designated Record Set”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

5. **“Disclosure”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

6. **“Electronic Protected Health Information”** and/or **“ePHI”** shall have the same meaning as the term “electronic protected health information" in 45 CFR § 160.103, and shall include, without limitation, any EPHI provided by **Covered Entity** or created or received by Business Associate on behalf of **Covered Entity**.

7**. “Health Care Operations”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

8. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR. Parts 160-164).

9. **“HIPAA Omnibus Rule”** means the provisions set out in the Federal Register on January 25, 2013, entitled *“Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules.”* These provisions are set out under 45 CFR §§ 160 and 164. The provisions represent the Final Rules and modifications to the HIPAA Privacy, Security, and Enforcement rules, as mandated by HITECH.

10. **“HITECH”** means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

11. **“Individual”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 160.103. It shall also include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

12. **“Minimum Necessary”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

13. **“Notice of Privacy Practices”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

14. **“Office of Civil Rights”** (OCR) is the entity within the Centers for Medicare and Medicaid Services (CMS) responsible for overseeing and enforcing the HIPAA Privacy Rule and HITECH’s enforcement scheme.

15. **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information, and Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”), that are codified at 45 CFR §§ 160 and 164, Subparts A, C, and E and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

16. **“Protected Health Information”** and / or **“PHI”** and / or **“ePHI** (electronic PHI) shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and shall include, without limitation, any PHI provided by **Covered Entity** or created or received by **Business Associate** on behalf of **Covered Entity**. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use of PHI shall apply equally to ePHI. **Additionally, whenever PHI is cited, the provisions discussed cover ePHI as well.**

17. **“Required By Law”** shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and any additional requirements created under HITECH.

18. **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his / her designee.

19. **“Security Incident”** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR § 164.304.

20. **“Services Agreement”** shall mean the underlying agreement(s) that outline the terms of the services that **Business Associate** agrees to provide to **Covered Entity** and that fall within the functions, activities or services described in the definition of “**Business Associate”** at 45 CFR § 160.103.

21. **“Subcontractor”** shall have the same meaning as the term “business associate” at 45 CFR § 160.103. As previously discussed, a “business associate” is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to PHI.  Under the HIPAA Omnibus Rule, the term “business associate” is also meant to describe a “subcontractor” that creates, receives, maintains, or transmits PHI on behalf of another business associate.

22. **“Unsecured PHI”** shall have the same definition that the Secretary gives the term in guidance issued pursuant to § 13402 of HITECH.

23. **“Use”** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

**III. Permitted Uses and Disclosures by Business Associate:**

1. **Business Associate** agrees that it shall only use and disclose PHI in accordance with the terms of this **Business Associate Agreement** or as is required by law.

2. **Business Associate** shall not use or disclose PHI except for the purpose of performing **Business Associate's** obligations to **Covered Entity**, as such use or disclosure is limited by this Agreement.

3. **Business Associate** shall not use or disclose PHI or ePHI in any manner that would constitute a violation of the Privacy Rule. So long as such use or disclosure does not violate the Privacy Rule or this Agreement, **Business Associate** may use PHI and ePHI (a) as is necessary for the proper management and administration of **Business Associate's** organization, or (b) to carry out the legal responsibilities of **Business Associate**, as provided in 45 CFR § 164.504(e)(4).

4. **Business Associate** will ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to the same restrictions and conditions, including but not limited to those relating to termination of the contract for improper disclosure, that apply to **Business Associate** with respect to such information. Further, **Business Associate** shall implement and maintain sanctions against agents and subcontractors, if any, that violate such restrictions and conditions. **Business Associate** shall terminate any agreement with an agent or subcontractor, if any, who fails to abide by such restrictions and obligations. **Business Associate** shall not provide any PHI or ePHI to any third party or subcontract any services without **Covered Entity’s** express written permission.

5. In accordance with 45 CFR § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, **Business Associate** will 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;

6. **Business Associate** shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI or ePHI other than as provided by this Agreement, and to implement administrative, physical, and technical safeguards as required by §§ 164.308, 164.310, 164.312 and 164.316 of Title 45, CFR and HITECH in order to protect the confidentiality, integrity, and availability of ePHI or PHI that **Business Associate** creates, receives, maintains, or transmits, to the same extent as if **Business Associate** were a **Covered Entity**. *See* HITECH § 13401.

7. The additional requirements of Title XIII of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to **Business Associate** and shall be and by this reference hereby incorporated into this Agreement.

8. **Business Associate** agrees to mitigate any harmful effect that is known to **Business Associate** of a use or disclosure of PHI or ePHI by **Business Associate** in violation of the requirements of this Agreement and to notify **Covered Entity** of any breach of unsecured PHI or ePHI, as required under HITECH § 13402.

9. **Business Associate** shall report, in writing, to **Covered Entity** any use or disclosure of PHI that is not authorized by the Agreement. Such written notice shall be provided to **Covered Entity** within five (5) business days of becoming aware of such use or disclosure.

10. In the case of a breach of unsecured PHI or ePHI, **Business Associate** shall, following the discovery of a breach of such information, notify the **Covered Entity** of such breach. The notice shall include the identification of each individual whose unsecured PHI / ePHI has been, or is reasonably believed by the **Business Associate** to have been, accessed, acquired, or disclosed during the breach. If the breach involves the unsecured PHI / ePHI of more than 500 residents of \_\_\_\_\_\_\_ (the relevant State) or residents of a certain region, or is reasonably believed to have been accessed, acquired or disclosed during such incident, **Covered Entity** will also notify the prominent media outlets. The media outlets must serve the geographic area affected.

11. **Business Associate** must obtain, prior to making any permitted disclosure, reasonable assurances from such third party that such PHI / ePHI will be held secure and confidential as provided pursuant to this Agreement and only disclosed as Required by Law or for the purposes for which it was disclosed to such third party, and that any breaches of confidentiality of the PHI / ePHI which becomes known to such third party will be immediately reported to **Business Associate**. As part of obtaining this reasonable assurance, **Business Associate** agrees to enter into a Business Associate Agreement with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and HITECH § 13401.

12. **Business Associate** shall make PHI / ePHI in Designated Record Sets that are maintained by **Business Associate** or its agents or subcontractors, if any, available to **Covered Entity** for inspection and copying within ten (10) days of a request by **Covered Entity** to enable **Covered Entity** to fulfill its obligations under the Privacy rule, including, but not limited to, 45 CFR § 164.524.

13. Within ten (10) days of receipt of a request from **Covered Entity** for an amendment of PHI / ePHI or a record about an individual contained in a Designated Record Set, **Business Associate** or its agents or subcontractors, if any, shall make such information available to **Covered Entity** for amendment and shall incorporate any such amendment to enable **Covered Entity** to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524. If an Individual requests an amendment of PHI / ePHI directly from **Business Associate** or its agents or subcontractors, if any, **Business Associate** must notify **Covered Entity** in writing within five (5) days of the request. Any denial of amendment of PHI / ePHI maintained by **Business Associate** or its agents or subcontractors, if any, shall be the responsibility of **Covered Entity**. Upon the approval of **Covered Entity, Business Associate** shall appropriately amend the PHI / ePHI maintained by it, or any agents or subcontractors.

14. Within ten (10) days of notice by **Covered Entity** of a request for an accounting of disclosures of PHI / ePHI, **Business Associate** and any agents or subcontractors shall make available to **Covered Entity** the information required to provide an accounting of disclosures to enable **Covered Entity** to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528. Except in the case of a direct request from an individual for an accounting related to treatment payment or operations disclosures through an electronic health record, if the request for an accounting is delivered directly to **Business Associate** or its agents or subcontractors, if any, **Business Associate** shall within five business (5) days of a request notify **Covered Entity** about such request. **Covered Entity** shall either inform **Business Associate** to provide such information directly to the Individual, or it shall request the information to be immediately forwarded to **Covered Entity** for compilation and distribution to such Individual. In the case of a direct request for an accounting from an individual related to treatment, payment or operations disclosures through electronic health records, **Business Associate** shall provide such accounting to the Individual in accordance with HITECH § 13405(c). **Business Associate** shall not disclose any PHI / ePHI unless such disclosure is required by law or is in accordance with this Agreement. **Business Associate** shall document any disclosures.

15. To the extent the **Business Associate** is to carry out one or more of **Covered Entity's** obligation(s) under Subpart E of 45 CFR Part 164, then **Business Associate** must comply with the requirements of Subpart E that apply to the **Covered Entity** in the performance of such obligation(s);

16. **Business Associate** shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining **Covered Entity’s** compliance with the Privacy Rule. **Business Associate** shall notify **Covered Entity** regarding any PHI that **Business Associate** provides to the Secretary concurrently with providing such PHI to the Secretary, and upon request by **Covered Entity**, shall provide **Covered Entity** with a duplicate copy of such PHI.

17. **Business Associate** and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. **Business Associate** agrees to comply with the Secretary’s guidance on what constitutes minimum necessary. *See* HITECH § 13405.

18. **Business Associate** and any subcontractor associated with this Agreement acknowledge that they do not have any ownership rights related to the PHI or ePHI held, stored or maintained.

18. **Business Associate** and its subcontractors or agents, if any, shall retain any PHI throughout the term of the Agreement.

19. During the term of this Agreement, **Business Associate** and/or any associated subcontractor shall notify **Covered Entity** within twenty-four (24) hours of any suspected or actual Security Incident or breach of security, intrusion or unauthorized use or disclosure of PHI or ePHI and/or any actual or suspected use or disclosure of data in violation of any applicable Federal or State laws or regulations, or any legal action against **Business Associate** arising from an alleged HIPAA violation. **Business Associate** shall take:

(i) prompt action to correct any such deficiencies and

(ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

20. Within ten (10) business days of a written request by **Covered Entity, Business Associate** and its agents or subcontractors, if any, shall allow **Covered Entity** to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether **Business Associate** and/or associated subcontractor has complied with the terms of this Agreement, HIPAA and HITECH; provided, however, that:

(i) **Business Associate** and **Covered Entity** mutually agree in advance upon the scope, location and timing of such an inspection; and

(ii) **Covered Entity** shall protect the confidentiality of all confidential and proprietary information of **Business Associate** to which **Covered Entity** has access during the course of such inspection.

21. Except as otherwise limited in this Agreement, **Business Associate** may use PHI / ePHI to provide Data Aggregation services to **Covered Entity** as permitted by 45 CFR §164.504(e)(2)(I)(B).

22. **Business Associate** is required to implement and adhere to an Identity Theft Monitoring Policy and Procedure, to protect any patient information that may be breached by the Business Associate, under the Federal Trade Commission Regulations Red Flag Rules.

23. If **Business Associate** knows of a pattern of activity or practice by the **Covered Entity** that constitutes a material breach or violation of the **Covered Entity’s** obligations under this Agreement, **Business Associate** will take reasonable steps to promptly notify the Covered Entity of its concerns so that curative measures can be taken to stop or prevent a breach and/or end the violation. If such steps are unsuccessful within a period of 30 days, **Business Associate** will either: (1) terminate the Agreement, if feasible; or (2) report the problem to the Secretary.

**IV. Permitted Uses and Disclosures by Business Associate:**

1. **Business Associate** may only use or disclose PHI:

[**Option 1** – OCR suggests that one option would be for the parties to provide a specific list of permissible purposes that PHI may be used or disclosed]

[**Option 2** – OCR suggests that the parties reference an underlying Service Agreement, such as “as necessary to perform the services set forth in Service Agreement.” For instance, in the case of an outside third-party billing company, the Service Agreement would essentially be the billing contract between the parties ]

[In addition to other permissible purposes, OCR recommends that the parties specify whether a Business Associate is authorized to use PHI or ePHI to de-identify the information in accordance with 45 CFR § 164.514(a)-(c).  The parties also may wish to specify the manner in which the Business Associate will de-identify the information and the permitted uses and disclosures by the Business Associate of the de-identified information.]

2. **Business Associate** may use or disclose protected health information as required by law.

3. **Business Associate** agrees to make uses and disclosures and requests for PHI.

[**Option 1** – OCR notes that any uses, disclosures and requests for PHI or ePHI need to be consistent with the Covered Entity’s minimum necessary policies and procedures]

[**Option 2** – Any uses, disclosures or requests for PHI or ePHI needs to include specific minimum necessary provisions that are consistent with the Covered Entity’s minimum necessary policies and procedures.]

4. **Business Associate** may not use or disclose PHI or ePHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by **Covered Entity**. If an Agreement permits a **Business Associate** to use or disclose PHI for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions (e), (f), or (g) below, then add “, except for the specific uses and disclosures set forth below.”]

5. **Business Associate** may use PHI for the proper management and administration of the **Business Associate** or to carry out the legal responsibilities of the **Business Associate.**

6. **Business Associate** may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the **Business Associate**, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes 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.

7. If requested by **Covered Entity,** a **Business Associate** or subcontractor may provide data aggregation services relating to the health care operations of the **Covered Entity.**

**V. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions:**

1. **Covered Entity** shall notify **Business Associate** of any limitation(s) in the notice of privacy practices of **Covered Entity** under 45 CFR § 164.520, to the extent that such limitation may affect **Business Associate’s** use or disclosure of protected health information. Covered Entity shall also notify Business Associate of any changes to notice of privacy practices that may be made.

2. **Covered Entity** shall provide **Business Associate** with notice of any changes to, revocation of, or permission by an individual to use or disclose his or her PHI, if such changes affect **Business Associate's** permitted uses or disclosures, within a reasonable period of time after **Covered Entity** becomes aware of such changes to or revocation of permission.

3. **Covered Entity** shall notify **Business Associate** of any restriction to the use or disclosure of PHI that **Covered Entity** has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a). to the extent that such restriction may affect business associate’s use or disclosure of protected health information.

**VI. Permissible Requests by Covered Entity:**

1. **Covered Entity** shall not request **Business Associate** to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by the **Covered Entity**.

[OCR suggests that you include an exception if the Business Associate will use or disclose PHI for, and the Agreement includes provisions for, data aggregation or management and administration and legal responsibilities of the Business Associate]

**VII. Term and Termination of this Agreement:**

1. The term of this Agreement shall be effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_ (Insert the Effective Date of the Agreement) and shall terminate on \_\_\_\_\_\_\_\_\_\_ or on the date that **Covered Entity** terminates this Agreement for cause as authorized in Section 2 below, whichever is sooner. Any provision related to the use, disclosure, access, or protection of ePHI or PHI or that by its terms should survive termination of this Agreement, shall do so.

2. A **Covered Entity** may terminate this Agreement for cause if **Business Associate** has violated a material term of this Agreement. For instance, a breach by **Business Associate**, or its agents or subcontractors, if any, of any provision of this Agreement (as determined by **Covered Entity)**, shall constitute a material breach of the Agreement. If **Business Associate** breaches this Agreement, **Covered Entity** may, in its discretion:

(i) Provide an opportunity for **Business Associate** to cure the breach or end the violation and terminate this Agreement if **Business Associate** does not promptly cure the breach or end the violation within a period not to exceed 30 days; or

(ii) Report the violation to the Secretary if neither cure nor termination is feasible.

3. **Covered Entity** may terminate this Agreement effective immediately, if:

(i) **Business Associate** is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or

(ii) There is a finding or stipulation that **Business Associate** has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which **Business Associate** is involved.

4. **Business Associate** is obligated to take the following actions upon termination of this Agreement:

[**Option 1** – If a Business Associate is to return or destroy all PHI upon termination of the Agreement, the following language may be used]:

Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity [or, if agreed to by Covered Entity, destroy] all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form.  Business Associate shall retain no copies of the PHI.

[**Option 2** — If the Agreement authorizes the Business Associate to use or disclose PHI for its own management and administration or to carry out its legal responsibilities and the Business Associate needs to retain PHI for such purposes after termination of the Agreement, then it needs to be specified as such and the following language may be used]:

Upon termination of this Agreement for any reason, business associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

* 1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  2. Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the remaining PHI that the Business Associate still maintains in any form;
  3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
  4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section IV under “Permitted Uses and Disclosures By Business Associate” which applied prior to termination; and
  5. Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

[OCR notes that the Agreement also could provide that the Business Associate will transmit the PHI to another Business Associate of the Covered Entity at termination, and/or could add terms regarding a Business Associate’s obligations to obtain or ensure the destruction of PHI created, received, or maintained by subcontractors.]

5. The obligations of Business Associate under Section IV shall survive the termination of this Agreement.

**VIII. Miscellaneous:**

1. A reference in this Agreement to a Section in the Privacy Rule means the Privacy Rule Section as in effect, or as amended in the future.

2. **Business Associate** and any of its subcontractors and agents shall indemnify, hold harmless and defend Covered Entity and its employees, officers, directors, agents, and contractors from and against any and all claims, losses, liabilities, costs, attorneys’ fees, and other expenses incurred as a result of or arising directly or indirectly out of or in connection with **Business Associate’s** or its subcontractors’ or agents’ breach of this Agreement, violation of HIPAA, HITECH or other applicable law, or otherwise related to the acts or omissions of **Business Associate** or its subcontractors or agents.

3. **Business Associate** may not subcontract any services or assign any rights, nor may it delegate its duties, under this Agreement without the express written consent of **Covered Entity.**

4. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than **Covered Entity, Business Associate,** or their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. The parties are independent contractors and nothing in this Agreement shall be deemed to make them partners or in a joint venture together.

6. If any modification to this Agreement is Required By Law or required by HITECH or any other Federal or State law affecting this Agreement, or if **Covered Entity** reasonably concludes that an amendment to this Agreement is needed because of a change in Federal or State law or changing industry standards, **Covered Entity** shall notify **Business Associate** of such proposed modification(s). These legally mandated modifications shall be deemed accepted by **Business Associate** and this Agreement will be amended to reflect these changes, if **Business Associate** does not, within thirty (30) calendar days following the date of the notice (or within such other time period as may be mandated by applicable State or Federal law), deliver to **Covered Entity** its written rejection of these legally mandated changes.

7. **Business Associate** will comply with all appropriate Federal and State security and privacy laws, to the extent that such laws apply to **Business Associate** or are more protective of Individual privacy than are the HIPAA laws.

8. All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by Registered or Certified Mail placed in the mail no later than the following day), or by Registered or Certified mail, postage prepaid, addressed to a party as indicated below:

**If to Business Associate: If to Covered Entity:**

INSERT NAME AND ADDRESS INSERT NAME AND ADDRESS

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

9. If any provision of this Agreement is determined by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

10. This Agreement contains the entire understanding between the parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any Services Agreement. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default.

11. This Agreement shall be governed by State law without respect to its conflict of law principles.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

**Business Associate Covered Entity**

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

On Behalf of: \_\_\_\_\_\_\_\_\_\_ On Behalf of: \_\_\_\_\_\_\_\_\_\_\_\_

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

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