

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “*Agreement*”) is made and entered into as of this _____ day of _____, 20__ (the “*Effective Date*”) by and between [INSERT APPLICABLE WOODRIDGE ENTITY] (“*Covered Entity*”) and [NAME OF BUSINESS ASSOCIATE] (“*Business Associate*”).

WHEREAS, Business Associate will provide certain administrative services (the “*Services*”) as set forth more fully in the [NAME OF SERVICES AGREEMENT] between Covered Entity and Business Associate of even date herewith (the “*Services Agreement*”);

WHEREAS, Covered Entity and Business Associate are required to meet the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the “*Act*”), the privacy standards adopted by the U.S. Department of Health and Human Services (“*HHS*”) as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the “*Privacy Rule*”), the security standards adopted by HHS as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and C (the “*Security Rule*”), and the privacy provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of Pub. L. 111-5, and its implementing regulations (the “*HITECH Act*”), due to their status as a “Covered Entity” or a “Business Associate” under the Act. (The Act, the Privacy Rule, the Security Rule, and the HITECH Act are collectively referred to herein as “*HIPAA*” for the purposes of this Agreement.);

WHEREAS, in order to provide the Services under the Services Agreement, Covered Entity may disclose to Business Associate certain Protected Health Information (“*PHI*”); and

WHEREAS, the parties desire to enter into this Agreement to (i) protect the privacy, and provide for the security of PHI disclosed by Covered Entity to Business Associate, and (ii) to satisfy certain requirements imposed upon the parties by HIPAA.

NOW, THEREFORE, in consideration of the mutual benefits of complying with laws and regulations stated above, Covered Entity and Business Associate agree as follows:

ARTICLE I

DEFINITIONS

1.1 “**Business Associate**” shall generally have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to this Agreement, shall mean the entity defined above as the Business Associate.

1.2 “**Covered Entity**” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to this Agreement, shall mean the entity indicated as the Covered Entity above.

1.3 Other Terms. Capitalized terms not specifically defined in this Agreement shall have the meanings attributed to them under HIPAA.

ARTICLE II

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

2.1 Permitted Uses & Disclosures.

(a) Business Associate may use and disclose PHI on behalf of Covered Entity pursuant to the Services Agreement between Business Associate and Covered Entity or as Required By Law. Except for the specific uses or disclosures set forth in this Section 2.1, Business Associate may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity. Business Associate shall limit its use, disclosure or request of PHI, to the extent practicable, to a Limited Data Set or, if needed by Business Associate, to the Minimum Necessary.

(b) Unless otherwise limited herein and except where prohibited by law, Business Associate may (i) use or disclose PHI for the proper management and administration of Business Associate; and (ii) disclose PHI to fulfill any present or future legal responsibilities of Business Associate; provided that any disclosure described by Subsection (i) or (ii) of this Section is Required by Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be kept 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 agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.2 Prohibited Uses and Disclosures.

(a) Requests for Non-Disclosure. As applicable, Business Associate shall abide by a request from an Individual pursuant to 45 C.F.R. § 164.522(a) to refrain from making certain uses or disclosures of the Individual's PHI (i) to which Covered Entity has agreed; or (ii) to a health plan in connection with an item or service for which the Individual has paid out-of-pocket, in full, to which the Covered Entity is required to agree.

(b) Prohibition on Sale of PHI. Business Associate shall not sell PHI or receive any direct or indirect remuneration in exchange for PHI.

(c) Prohibition on Marketing. Business Associate shall not transmit, to any Individual for whom Business Associate has PHI, any communication about a product or service that encourages the recipient of the communication to purchase or use that product or service unless permitted to do so.

2.3 Safeguards for the Protection of PHI. Business Associate shall use appropriate safeguards and shall comply with the requirements of the Security Rule

applicable to Business Associate including those set forth at 45 C.F.R. parts 164.306, 164.308, 164.310, 164.312 and 164.316 to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall document and keep current its policies to safeguard PHI, and will provide a copy of such policies to Covered Entity upon request.

2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of HIPAA.

2.5 Reporting to Covered Entity.

(a) **Breach and Other Privacy Rule Violations.** Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, the Services Agreement, or that is in violation of any provision of HIPAA, including any Breach of unsecured PHI as required by 45 C.F.R. § 164.410, within five (5) business days after the date on which Business Associate learns or should have learned of such occurrence. In its report to Covered Entity, Business Associate will identify, at a minimum (i) the nature of the non-permitted use or disclosure; (ii) the PHI used or disclosed; (iii) the party or parties who made the non-permitted use or received the non-permitted disclosure; (iv) what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures; (v) what Business Associate did or will do to mitigate any harmful effect of the non-permitted use or disclosure; (vi) such other information, including a written report, as Covered Entity may request; and (vii) such other information as HHS may prescribe by regulation.

(b) **Security Incidents.** Business Associate shall report all Security Incidents to Covered Entity, in accordance with the following reporting procedures for (i) Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of electronic PHI (“*ePHI*”) or interference with system operations (“*Successful Security Incidents*”); and (ii) Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of ePHI or interference with system operations (“*Unsuccessful Security Incidents*”).

(i) **Successful Security Incidents.** Business Associate shall provide notice to Covered Entity of any Successful Security Incident of which it becomes aware within five (5) business days. At a minimum, such report shall contain the following information: (A) date and time when the Security Incident occurred and/or was discovered; (B) names of systems, programs, or networks affected by the Security Incident; (C) preliminary impact analysis; (D) description of and scope of ePHI used, disclosed, modified, or destroyed; and (E) any mitigation steps taken by Business Associate.

(ii) **Unsuccessful Security Incidents.** To avoid unnecessary burden on either party, Business Associate shall report to Covered Entity any Unsuccessful Security Incident of which it becomes aware only upon

request of Covered Entity. The frequency, content and the format of the report of Unsuccessful Security Incidents shall be mutually agreed upon by the parties. If the definition of “Security Incident” is amended under the Security Rule to remove the requirement for reporting “unsuccessful” attempts to use, disclose, modify or destroy ePHI, then this Section 2.5(b)(ii) shall no longer apply as of the effective date of such amendment.

2.6 Use of Subcontractors. Business Associate shall not use any Subcontractor to assist Business Associate with the provision of the Services under the Services Agreement without the prior consent of Covered Entity. Business Associate may disclose PHI to a Subcontractor only to the extent expressly permitted by the Services Agreement and subject to the terms of this Agreement. Prior to the disclosure of PHI to any Subcontractor, Business Associate shall cause each such Subcontractor to agree in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Upon request, Business Associate shall provide to Covered Entity a copy of the written contract with the Subcontractor. Furthermore, Business Associate shall disclose to its Subcontractors only the Minimum Necessary to perform such Services as are delegated to the Subcontractor by the Business Associate.

2.7 Authorized Access to PHI. At the request of Covered Entity and within ten (10) calendar days of such request, Business Associate shall make available to Covered Entity (or to the Individual at the direction of Covered Entity) for inspection and copying, any PHI about an Individual which Business Associate created or received for or from Covered Entity and that is in the custody or control of Business Associate as required by 45 C.F.R. § 164.524. To enable Covered Entity to fulfill its obligations that pertain to an Individual’s request for an electronic copy of his or her PHI that is used or maintained in an Electronic Health Record, to the extent Business Associate uses or maintains PHI in an Electronic Health Record, Business Associate shall provide Covered Entity with a copy of such information in electronic format, at Covered Entity’s expense, within five (5) calendar days of a request by Covered Entity.

2.8 Amendment of PHI. Business Associate shall, at the request of Covered Entity, within twenty (20) calendar days, amend PHI in accordance with the instructions provided by Covered Entity or permit Covered Entity access to amend any portion of the PHI which Business Associate created or received from or on behalf of Covered Entity, as required by 45 C.F.R. §164.526.

2.9 Accounting of Disclosures of PHI.

(a) **Disclosure Tracking.** Business Associate shall retain a record of each disclosure of PHI that Business Associate makes to a third party to the extent required by HIPAA, including (i) the disclosure date; (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure.

(b) Disclosure Accounting. Business Associate shall provide an accounting of disclosure of PHI to Covered Entity (or to an individual, is so directed by Covered Entity) (i) no later than twenty (20) calendar days after receipt of a written request for such disclosure accounting by Covered Entity pursuant to 45 C.F.R. § 164.528, or (ii) in accordance with HIPAA.

2.10 Performance of Obligations of Covered Entity. To the extent Business Associate is to carry out an obligation of Covered Entity under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in performance of such obligation.

2.11 Inspection of Books and Records. Business Associate shall make its internal practices, books, and records, relating to the use and disclosure of all such PHI, available to Covered Entity and to HHS to determine Covered Entity's and Business Associate's compliance with HIPAA.

ARTICLE III

TERM AND TERMINATION

3.1 Term. The term of this Agreement shall commence as of the Effective Date of this Agreement and shall continue in effect until terminated in accordance with Section 3.2

3.2 Termination. This Agreement shall terminate upon the earlier to occur of: (i) termination of the Services Agreement or (ii) receipt by Business Associate of Covered Entity's notice to terminate in the event Business Associate breaches a material term of this Agreement pursuant to Section 3.3.

3.3 Right to Terminate for Breach. Covered Entity has the right to terminate this Agreement immediately if Covered Entity determines, in its reasonable discretion that Business Associate has breached any material term of this Agreement. Following Covered Entity's determination that Business Associate has breached a material term of this Agreement, in lieu of immediate termination, Covered Entity may elect, in its sole discretion, to provide Business Associate with written notice of its determination, and afford Business Associate an opportunity to cure such alleged breach. In the event that Business Associate fails to cure said breach to the reasonable satisfaction of Covered Entity within such time frame as is designated by Covered Entity, Covered Entity may immediately terminate this Agreement and the Services Agreement.

3.4 Return or Destruction of PHI.

(a) Upon termination of this Agreement for any reason, Business Associate shall automatically return, at its cost, all PHI or any copies thereof received from Covered Entity that Business Associate or its agents or Subcontractors still maintain in any form. Prior to the return of PHI to Covered Entity, Business Associate may submit to Covered Entity a written request for permission to destroy PHI, and such request may be approved or denied in the sole discretion of Covered Entity.

(b) Business Associate shall not retain any copies of PHI unless Covered Entity expressly permits it to do so in writing.

3.5 Continuing Privacy and Security Obligation. If return or destruction of the PHI is not feasible, as determined by Covered Entity, Business Associate shall extend the protections of this Agreement for as long as necessary to protect the PHI and to limit any further use or disclosure. Business Associate shall only use or disclose such PHI for those purposes that make return or destruction infeasible.

3.6 Injunctive Relief. In the event of a breach of any material term of this Agreement, Covered Entity has a right to obtain injunctive relief to prevent future disclosure of PHI.

ARTICLE IV

INDEMNIFICATION

4.1 Indemnification. Business Associate shall indemnify and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee, subcontractor, agent, or other members of its workforce, from and against any claim, cause of action, liability, damage, fine, penalty, cost or expense (including without limitation, attorney fees, and costs related to notifications required under 45 CFR §§ 164.400 - 164.408, arising out of or in connection with any non-permitted use or disclosure of PHI or other breach of this Agreement by Business Associate or any subcontractor, affiliate, or agent therefore, including but not limited to any Subcontractor, that provides services described in or relating to the Services Agreement. Covered Entity shall control the defense of any claim indemnified hereunder at the expense of Business Associate. Notwithstanding any provision of the Services Agreement to the contrary, Business Associate's responsibility for indemnification arising out of or in connection with this Agreement will be governed solely by this Section 4.1 and no provision set forth in the Services Agreement, including indemnification provisions thereunder or any terms that define, restrict or limit the types or amounts of damages, costs or expenses, will in any way alter, expand, restrict or limit Business Associate's indemnification liability hereunder. The provisions of this Section 4.1 shall survive the termination of this Agreement.

4.2 Insurance. Business Associate represents and warrants that Business Associate has, and will maintain, at Business Associate's own expense, liability insurance covering breach of Business Associate's requirements under this Agreement and Business Associate's negligent or intentional disclosure or Breach of PHI covered by this Agreement. At the request of Covered Entity, Business Associate shall provide to Covered Entity proof of insurance coverage required by this Section 4.2.

ARTICLE V

MISCELLANEOUS

5.1 Amendments. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and other applicable laws relating to the security or confidentiality of PHI.

5.2 No Third Party Beneficiaries. 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 and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.3 Conflicts. The terms and conditions of this Agreement will override and control any conflicting term or condition of any other agreements that may be in place between the parties. All non-conflicting terms and conditions of this Agreement and any other agreement between the parties remain in full force and effect.

5.4 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with HIPAA.

5.5 Subpoenas. Business Associate shall provide written notice to Covered Entity of any subpoena or other legal process seeking PHI received from or created on behalf of Covered Entity, or otherwise relating to the provision of Services by Business Associate. Such written notice shall be provided within forty-eight (48) hours of receipt of a subpoena or other legal process.

5.6 Notices. All notices, records, or reports required to be given to either party under this Agreement will be in writing and sent by traceable carrier to each party's address indicated below, or such other address as a party may indicate by at least ten (10) business days' prior written notice to the other party. Notices will be effective upon receipt.

COVERED ENTITY:

**[INSERT APPLICABLE WOODRIDGE ENTITY]
[ADDRESS]**

BUSINESS ASSOCIATE:

[NAME OF BUSINESS ASSOCIATE]

[ADDRESS OF BUSINESS ASSOCIATE]

5.7 Counterparts. This Agreement may be executed in two or more counterparts and each such counterpart executed shall for all purposes be deemed an original, and all counterparts together shall constitute but one and the same instrument. This shall be binding upon all signatories hereof who sign below.

5.8 Survival. The rights and obligations of Business Associate under Sections 2.9, 3.5, 3.6, 4.1, 4.2, and Article V of this Agreement shall survive the termination of this Agreement.

5.9 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of **[INSERT APPLICABLE STATE]**. Jurisdiction and venue for any dispute relating to this Agreement shall rest exclusively with the state and federal courts of the State of **[INSERT APPLICABLE STATE]**.

[SIGNATURE PAGE FOLLOWS]