

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement between the parties dated _____ ("the Agreement") sets forth the responsibilities of _____, as BUSINESS ASSOCIATE of _____ ("COVERED ENTITY").

Terms used but not otherwise defined herein shall have the meaning ascribed to them in Section F below.

A. BACKGROUND

Pursuant the Agreement, COVERED ENTITY has engaged BUSINESS ASSOCIATE to provide it with the services described in the Agreement, some or all of which constitute "Business Associate" functions under the Privacy Standards or Security Standards. In the course of providing such services, BUSINESS ASSOCIATE may, upon occasion, use Protected Health Information ("PHI") originating from the COVERED ENTITY. This Exhibit [Attachment/Addendum] sets forth BUSINESS ASSOCIATE's responsibilities and obligations with respect to its obligations to safeguard the confidentiality and security of PHI that it uses, accesses, or discloses in the performance of such services.

B. OBLIGATIONS OF BUSINESS ASSOCIATE:

Section 1. Use and Disclosure of PHI. BUSINESS ASSOCIATE shall not, and shall ensure that its directors, officers, employees, and Subcontractors do not, use or disclose PHI received from the COVERED ENTITY in any manner that would constitute a violation of the Privacy Standards if used or disclosed by the COVERED ENTITY, except that BUSINESS ASSOCIATE may use or disclose PHI in a manner as required by law. In addition, BUSINESS ASSOCIATE may use or disclose PHI (i) for BUSINESS ASSOCIATE's proper management and administrative services, or (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE. To the extent BUSINESS ASSOCIATE discloses PHI to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (a) reasonable assurances from each such third party that such PHI will be held confidential as provided pursuant to this Exhibit [Attachment/Addendum] and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (b) an agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

Section 2. Safeguards Against Misuse of Information. BUSINESS ASSOCIATE agrees that it will implement all appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Exhibit [Attachment/Addendum].

Section 3. Reporting of Breaches and other Improper Disclosures of PHI. BUSINESS ASSOCIATE shall, within five (5) days of becoming aware of a Breach of Unsecured PHI or any other disclosure of PHI in violation of this Exhibit [Attachment/Addendum] by BUSINESS ASSOCIATE, its officers, directors, employees, or Subcontractors to which BUSINESS ASSOCIATE disclosed PHI pursuant to Section B(1) of this Exhibit [Attachment/Addendum], report any such Breach or improper disclosure to the COVERED ENTITY. Such notification shall include, to the extent possible, the identification of each individual whose PHI has been, or

is reasonably believed by BUSINESS ASSOCIATE to have been, accessed, acquired, used, or disclosed during the Breach. In addition, BUSINESS ASSOCIATE shall provide COVERED ENTITY with the following information, to the extent available at the time initial notice under this Section 3 is provided, or promptly thereafter as such information becomes available:

- A brief description of what happened, including the date of the Breach or wrongful disclosure and the date of discovery.
- A description of the type of PHI that was involved (e.g., name, Social Security Number, procedure, diagnosis, treatment, etc.).
- The steps that BUSINESS ASSOCIATE recommends that the individual should take to protect himself or herself.
- A brief description of the steps that BUSINESS ASSOCIATE is taking to investigate, mitigate harm, and protect against future similar breaches.

Section 4. Agreements with Subcontractors. BUSINESS ASSOCIATE shall enter into an agreement with any third party subcontractor ("Subcontractor") to whom it has delegated any responsibilities under this Exhibit [Attachment/Addendum] or the Agreement and that will have access to PHI that is received from, or created or received by BUSINESS ASSOCIATE in carrying out its services on behalf of or for the COVERED ENTITY, pursuant to which such Subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to BUSINESS ASSOCIATE, pursuant to this Exhibit [Attachment/Addendum] with respect to such PHI.

Section 5. Access to Information. Within five (5) days of a notice to BUSINESS ASSOCIATE by the COVERED ENTITY that an individual has requested access to PHI about that individual contained in a Designated Record Set, BUSINESS ASSOCIATE shall make available to the COVERED ENTITY such PHI maintained by BUSINESS ASSOCIATE, if any, for so long as, and to the extent that, such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall within two (2) days forward such request to the COVERED ENTITY. Any denials of individuals requests for access to the PHI requested shall be the responsibility of the COVERED ENTITY.

Section 6. Availability of PHI for Amendment. Within ten (10) days of receipt of notice from the COVERED ENTITY that an individual has requested amendment of the individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as, and to the extent that the PHI is maintained in the Designated Record Set), BUSINESS ASSOCIATE shall provide such information to the COVERED ENTITY for amendment and incorporate any such amendments in the PHI as required by 45 C. F. R. § 164.526.

Section 7. Accounting of Disclosures. Within ten (10) days of notice by the COVERED ENTITY to BUSINESS ASSOCIATE that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, BUSINESS ASSOCIATE shall make available to the COVERED ENTITY such information as is in BUSINESS ASSOCIATE'S possession and is required for the COVERED ENTITY to make the accounting required by 45 C.F.R. § 164.528, if any. If such accounting is required, at a minimum, BUSINESS ASSOCIATE shall provide the COVERED ENTITY with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief

description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall within two (2) days forward such request to the COVERED ENTITY. It shall be the COVERED ENTITY's responsibility to prepare and deliver any such accounting requested. BUSINESS ASSOCIATE hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

Section 8. Availability of Books and Records. BUSINESS ASSOCIATE hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by BUSINESS ASSOCIATE on behalf of, the COVERED ENTITY available to the Secretary for purposes of determining the COVERED ENTITY's and BUSINESS ASSOCIATE's compliance with the Privacy Standards.

Section 9. Security of Electronic Protected Health Information. To the extent that BUSINESS ASSOCIATE receives, uses, creates, maintains and/or discloses any Electronic Protected Health Information ("E-PHI") in the course of providing services for or on behalf of COVERED ENTITY, BUSINESS ASSOCIATE additionally agrees: (i) to implement administrative, physical and technical Safeguards to protect the confidentiality, integrity, and availability of the E-PHI that it creates, receives, maintains, or transmits on behalf of the COVERED ENTITY, as required by the Security Standards; (ii) to notify the COVERED ENTITY if the BUSINESS ASSOCIATE becomes aware of a security incident involving the COVERED ENTITY'S E-PHI; and (iii) to ensure that any Subcontractor, to whom it provides such E-PHI agrees to implement reasonable and appropriate safeguards to protect the COVERED ENTITY'S E-PHI.

Section 10. Compliance with HITECH and Omnibus Final Rule Amendments to the HIPAA Security Standards. BUSINESS ASSOCIATE acknowledges that, in addition to its contractual obligations to COVERED ENTITY to protect the confidentiality and security of PHI under this Agreement, as of the September 23, 2013 Compliance Date (the "Compliance Date") for certain regulations implementing certain provisions of Health Information Technology for Economic and Clinical Health Act (HITECH Act) and Omnibus Final Rule, BUSINESS ASSOCIATE also will be directly subject to certain Security Standards. This means that, as of such Compliance Date of those HITECH and Omnibus Final Rule provisions applicable to Business Associate, it will be required to comply with certain Security Standards and will be subject to potential monetary and other penalties for violations of those HIPAA Standards just as if it were a covered entity. To the extent not already addressed in an express provision of this Agreement, BUSINESS ASSOCIATE and the COVERED ENTITY hereby incorporate by reference into this Agreement all applicable provisions of the HIPAA, HITECH and Omnibus Final Rule regulations, as may be amended from time to time, and BUSINESS ASSOCIATE shall comply with all such Standards, regulations, and related HITECH Act and Omnibus Final Rule requirements applicable to Business Associates that are effective at any time during the term of this Agreement, without the need to formally amend this Agreement.

C. TERM

This Exhibit [Attachment/Addendum] shall be in full force and effect beginning on the Effective Date set forth below and continuing until terminated in accordance with Section D.

D. TERMINATION OF EXHIBIT [ATTACHMENT/ADDENDUM] WITH BUSINESS ASSOCIATE (AND EFFECT UPON THE AGREEMENT)

Section 1. Termination Upon Breach of this Exhibit [Attachment/Addendum]. This Exhibit [Attachment/Addendum] may be terminated by either party upon fourteen (14) days written notice to the other party. In addition, this Exhibit [Attachment/Addendum] as well as the Agreement may be terminated by the COVERED ENTITY upon five (5) days written notice to BUSINESS ASSOCIATE in the event that the BUSINESS ASSOCIATE breaches any provision contained in this Exhibit [Attachment/Addendum] and such breach is not cured within such five (5) day period; provided, however, that in the event that termination of this Exhibit [Attachment/Addendum] is not feasible in the COVERED ENTITY's sole discretion, BUSINESS ASSOCIATE hereby acknowledges that the COVERED ENTITY shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Exhibit [Attachment/Addendum] to the contrary.

Section 2. Return or Destruction of PHI upon Termination. Upon termination of this Exhibit [Attachment/Addendum], BUSINESS ASSOCIATE shall either return or destroy all PHI received from the COVERED ENTITY or created or received by BUSINESS ASSOCIATE, on behalf of the COVERED ENTITY and which BUSINESS ASSOCIATE still maintains in any form. BUSINESS ASSOCIATE shall not retain any copies of such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Exhibit [Attachment/Addendum] shall survive termination of this Exhibit [Attachment/Addendum] and such PHI shall be used or disclosed solely for such purpose or purposes, which prevented the return or destruction of such PHI.

E. MISCELLANEOUS

Section 1. Entire Agreement; Conflicting Provisions. This Exhibit [Attachment/Addendum] represents the entire and sole agreement between the parties with respect to the subject contemplated herein ***and supercedes all prior discussions and agreements between COVERED ENTITY and BUSINESS ASSOCIATE on this subject.*** In the event of a conflict between a provision of this Exhibit [Attachment/Addendum] and the Agreement, the provisions in this Exhibit [Attachment/Addendum] shall control.

Section 2. Assignment. BUSINESS ASSOCIATE may not delegate its obligations or assign its rights hereunder without the prior written consent of COVERED ENTITY.

Section 3. Modification or Waiver. A modification or waiver of any of the provisions of this Exhibit [Attachment/Addendum] shall be effective only if made in writing and executed with the same formality as this Exhibit [Attachment/Addendum]. The failure of either party to insist upon strict performance of any of the provisions of this Exhibit [Attachment/Addendum] shall not be construed as a waiver of any subsequent default of the same or similar nature.

Section 4. Headings. All headings contained in this Exhibit [Attachment/Addendum] are for convenience of reference only, and shall not affect the construction or interpretation of this Exhibit [Attachment/Addendum].

Section 5. Notice. All notices to be given under this Exhibit [Attachment/Addendum] shall be in writing and shall be deemed given and served when delivered in person or mailed, postage prepaid or faxed to the addressee party at the following address:

COVERED ENTITY (Community)

Copy to:

BUSINESS ASSOCIATE:

Section 6. Interpretation. Any ambiguity in this Exhibit [Attachment/Addendum] shall be resolved in favor of a meaning that permits the COVERED ENTITY to comply with the Privacy and Security Standards.

Section 7. Authority. Each of the parties represents and warrants that it has the full and complete power and authority to execute this Exhibit [Attachment/Addendum] and that, assuming the due execution of this Exhibit [Attachment/Addendum] by all other parties hereto, this Exhibit [Attachment/Addendum] constitutes a valid and binding obligation of such party and is enforceable in accordance with its terms.

F. DEFINITIONS FOR USE IN THIS AGREEMENT

“Breach” (with respect to Unsecured PHI) shall have the meaning set forth in 45 C.F.R. § 164.402, as amended from time to time, and currently means the acquisition, access, use or disclosure of protected health information in a manner not permitted under the Privacy or Security Standards and which compromises the security or privacy of the PHI.

“Business Associate” shall mean an individual or entity that performs a function or activity on behalf of, or provides a service to the Covered Entity (as defined herein), that involves the collection, creation, use or disclosure of PHI. Effective as of September 23, 2013, the confidentiality and security responsibilities imposed by HIPAA upon a Business Associate shall also apply to Subcontractor (and any downstream subcontractors) no matter how far removed from the Covered Entity.

“Covered Entity” shall mean a health plan, health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the HIPAA Privacy and Security Standards. For purposes of this Exhibit [Attachment/Addendum], _____, LLC is the Covered Entity.

"Designated Record Set" shall mean a group of records maintained by or for the COVERED ENTITY that is (i) the medical records and billing records about individuals maintained by or for the COVERED ENTITY, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the COVERED ENTITY to make decisions about individuals. As used herein the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the COVERED ENTITY.

“Electronic Protected Health Information” (“E-PHI”) means protected health information that is transmitted or maintained in electronic media.

“Electronic Media” means:

(i) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or

(ii) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

"Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and

(i) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

(ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present or future payment for the provision of healthcare to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Privacy Standards" means the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

"Protected Health Information" (or "PHI") means Individually Identifiable Health Information that is (i) transmitted by electronic media, (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. "Protected Health Information" shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g (ii) records described in 20 U.S.C. § 1232g(a)(4)(B)(iv), or (iii) employment records.

"Secretary" means the Secretary of the Department of Health and Human Services.

“Security Standards” means the Security Standards for the Protection of Electronic Health Information, 45 CFR Part 160 and Part 164, Subparts A and C.

“Subcontractor” means a person/entity to whom/which BUSINESS ASSOCIATE, as a business associate, delegates a function, activity or service other than in the capacity of a workforce member of BUSINESS ASSOCIATE.

“Unsecured PHI” has the meaning set forth in 45 CFR § 164.402, as amended from time to time, and currently means PHI that has not been rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

IN WITNESS WHEREOF, the parties hereto have caused this Exhibit [Attachment/Addendum] to be executed by their duly authorized respective officers or representatives effective as of _____ (“the Effective Date”).

COVERED ENTITY

_____, LLC d/b/a _____

By:

Title:

BUSINESS ASSOCIATE

_____, _____

By:

Title: