

SAMPLE BUSINESS ASSOCIATE AGREEMENT

Note: This form is not meant to encompass all the various ways in which any particular facility may use health information and should be specifically tailored to your organization. In addition, as with any form of this nature, the document should be reviewed and approved by legal counsel prior to implementation.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), dated as of _____ (“Effective Date”), is entered into by and between _____, with an address at _____ (“Business Associate”) and _____ with an address at _____ (“Covered Entity”), (each a “Party” and collectively, the “Parties”).

WHEREAS, the Parties have entered into that certain agreement dated _____ (“Service Contract”) pursuant to which each Business Associate agrees to provide certain services to and on behalf of Covered Entity, which services require the Business Associates to use, disclose or maintain Protected Health Information received from or collected on behalf of Covered Entity;

WHEREAS, the Parties are committed to complying with the Privacy Regulations, the Security Regulations and the Breach Notification Regulations (as such terms are defined below) under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations and guidance issued by the Secretary (as defined below), all as amended from time to time (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary, all as amended from time to time (“HITECH Act”); and

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided, created, received, or maintained by Business Associate from or on behalf of Covered Entity will be handled between Business Associate and Covered Entity, and with third parties, during the term of their Service Contract and after its termination.

NOW THEREFORE, the parties agree as follows:

1. DEFINITIONS

The following capitalized terms, as used in this Agreement, shall have the meanings set forth below. Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§160.103, 164.103, 164.304, and 164.501.

- 1.1 “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards” set forth in 45 C.F.R. §164.304, and as amended.
- 1.2 “Data Aggregation” shall have the same meaning as the term “data aggregation” set forth in 45 C.F.R. §164.501, and as amended.

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- 1.3 “Data Breach Notification Rule” shall mean the “Notification in the Case of Breach of Unsecured Protected Health Information” regulations as set forth in 45 C.F.R. Part 164, Subpart D and as amended.
- 1.4 “Electronically Maintained” shall mean information stored by a computer or on any electronic medium from which information may be retrieved by a computer, such as electronic memory chips, magnetic tape, disk, or compact disc media.
- 1.5 “Electronically Transmitted” shall mean information exchanged with a computer using electronic media, such as the movement of information from one location to another using magnetic tape, disk or compact disc media; transmissions over the Internet, Extranet, leased lines, dial-up lines, or private networks; but excluding information exchanged using paper-to-paper facsimiles, person-to-person telephone calls, video teleconferencing, voicemail messages, telephone voice response or “faxback” systems.
- 1.6 “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- 1.7 “Physical Safeguards” shall have the same meaning as the term “physical safeguards” set forth in 45 C.F.R. §164.304, and as amended.
- 1.8 *[Optional]* “Personal Information” shall mean with respect to the resident of any state of the United States, the information designated as “personal information” for the purposes of that state’s breach notification law (typically a combination of the resident’s name and one or more of the resident’s social security number, driver’s license number, credit card number, debit card number or financial account number).
- 1.9 “Privacy Official” shall have the meaning as set out in 45 C.F.R. §164.530(a)(1), and as amended.
- 1.10 “Privacy Regulations” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E, as such provisions are currently drafted and as they are subsequently amended or revised.
- 1.11 “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.12 “Required By Law” shall have the same meaning as the term “Required by law” in 45 C.F.R. §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the same meaning as the term “security incident” set forth in 45 C.F.R. §164.304, and as amended.

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- 1.15 “Security Regulations” shall mean the Security Standards at 45 C.F.R. part 160, part 162, and part 164, subparts A and C, as such provisions are currently drafted and as they are subsequently amended or revised.
- 1.16 “Technical Safeguards” shall have the same meaning as the term “technical safeguards” set forth in 45 C.F.R. §164.304, and as amended.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

2.1 Services. Except as otherwise specified herein, Business Associate may make any and all uses of Protected Health Information that are necessary to perform its obligations under the Services Agreement, provided that Business Associate may not use or disclose Protected Health Information in a manner that would violate the Privacy Regulation if done by Covered Entity, except for those uses and disclosure set forth in Section 2.2 of this Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only:

- (a) to its employees, subcontractors and agents, in accordance with Section 3.1(e),
- (b) as directed by Covered Entity, or
- (c) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 2.2 below.

2.2 Business and Other Activities of Business Associate. Unless otherwise limited herein, the Business Associate may:

- (a) Use the Protected Health Information for the proper management and administration of Business Associate and to fulfill any present or future legal responsibilities of Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- (b) Disclose the Protected Health Information to third parties for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that:
 - (i) the disclosures are Required By Law, or
 - (ii) Business Associate has received from the third party written assurances regarding the confidential treatment of such Protected Health Information as required under 45 C.F.R. §164.504(e)(4)(ii)(B)(1), and that the third party will notify Business Associate of any instances of which it is aware in which the security of the Protected Health Information has been breached.
- (c) Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). However, under no circumstances may Business Associate disclose Protected Health Information of

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Covered Entity to another covered entity absent the explicit authorization of Covered Entity.

3. OBLIGATIONS OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

3.1 Obligations of Business Associate. With regard to the use or disclosure of Protected Health Information, Business Associate hereby agrees to do the following:

- (a) Use or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise Required By Law.
- (b) Report to the designated Privacy Official of Covered Entity, in writing, any use or disclosure of the Protected Health Information that is not permitted by the Privacy Regulations or this Agreement of which Business Associate becomes aware, within two business days of the Business Associate's discovery of such unauthorized use or disclosure.
- (c) Report to the designated Privacy Official of Covered Entity, in writing, any Security Incident of which Business Associate becomes aware, within two business days of the Business Associate's discovery of such Security Incident.
- (d) Use appropriate safeguards to maintain the security of the Protected Health Information and to prevent unauthorized use or disclosure of such Protected Health Information.
- (e) Require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the restrictions and conditions on the use or disclosure of Protected Health Information set forth in this Agreement and the HIPAA Privacy and Security Regulations and applicable provisions of the HITECH Act. Business Associate will provide a list of all of its subcontractors and agents who receive or use, or have access to, Protected Health Information within ten (10) days of Covered Entity's request.
- (f) Make available all records, books, agreements, policies and procedures relating to the use or disclosure of Protected Health Information to Covered Entity or the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations, the Security Regulations, and the Data Breach Notification Rule, subject to attorney-client and other applicable legal privileges.
- (g) Within seven (7) calendar days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual under 45 C.F.R. §164.524, which entitles Individuals access to their own Protected Health Information.

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- (h) Within seven (7) calendar days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual for an amendment of the Individual's Protected Health Information under 45 C.F.R. §164.526. Accordingly, Business Associate will promptly incorporate any amendment(s) to the Protected Health Information that Covered Entity directs or agrees to be made.
- (i) Within 7 calendar days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual's Protected Health Information in accordance with 45 C.F.R. §164.528.
- (j) Subject to Section 4.3 below, return to Covered Entity or destroy, within thirty (30) calendar days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall include all backup tapes or files).
- (k) Disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function permitted hereunder. Business Associate shall utilize a Limited Data Set, if practicable, for all uses, disclosures or requests of PHI. Otherwise, any uses or disclosures of PHI shall be limited to the "Minimum Necessary," as defined in 45 C.F.R. §164. 514(d) and pursuant to the requirements set forth in the HITECH Act at §13405(b). Business Associate acknowledges its obligation under §13405(b)(2) (42 U.S.C. §17935(b)(2)) of the HITECH Act to determine what constitutes the minimum necessary to accomplish the intended purposes of any disclosure of PHI.
- (l) Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use or disclosure of Protected Health Information that Business Associate reports to Covered Entity.
- (m) Business Associate agrees to notify Covered Entity without unreasonable delay and no more than two (2) business days after the discovery of a "breach" (as defined in 45 C.F.R. §164.402) of "unsecured" (as defined in 45 C.F.R. §164.402) PHI as required by the Data Breach Notification Rule ("Notification Event"). Business Associate agrees to treat a breach as discovered on the first day on which the Business Associate knew of the breach or should have known of the breach if it had exercised due diligence. Business Associate shall coordinate with the Covered Entity to (a) investigate the Notification Event, (b) inform all affected Individuals and (c) mitigate the Notification Event. Business Associate shall be responsible for any and all costs associated with responding to and mitigating Notification Events, including but not limited to investigation costs, mailing costs, call center costs, personnel costs, attorneys' fees, and other related expenses or costs associated with compliance with the Breach Notification Rule. Business Associate will provide the Covered Entity with the following information for each Notification Event in accordance with 45 C.F.R. §164.404:

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- (i) A description of what occurred with respect to the breach, including, to the extent known, the date of the breach and the date on which the breach was discovered; and
- (ii) A description of the types of unsecured PHI that were disclosed during the breach; and
- (iii) All other information required by Covered Entity in order to fulfill its obligations under the Breach Notification Rule.

3.2 Compliance with the Security Regulations. Business Associate will comply with all requirements of the Security Regulations. Without limiting the generality of the foregoing, with respect to all Protected Health Information that is Electronically Transmitted or Electronically Maintained, Business Associate shall implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronically Transmitted or Electronically Maintained Protected Health Information that the Business Associate creates, receives, maintains, or transmits on behalf of the Practice, all as required by, and set forth more specifically in, the Security Regulations.

3.3 Compliance with Certain Provisions of the HITECH Act.

- (a) Effective as of the date upon which the Secretary promulgates final regulations implementing the provisions of §13405(d) of the HITECH Act, Business Associate shall not, directly or indirectly, receive remuneration in exchange for any Protected Health Information of an individual, except pursuant to a valid written authorization signed by or on behalf of such individual, or as otherwise permitted under the HITECH Act or such implementing regulations.
- (b) With respect to written communications occurring after February 17, 2010, Business Associate shall not use or disclose Protected Health Information for the purpose of making such a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless such communication: (1) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 C.F.R. §164.501; and (2) complies with the requirements of subparagraphs (A), (B) or (C) of §13406(a)(2) of the HITECH Act. The Practice shall cooperate with Business Associate to determine if the foregoing requirements are met with respect to any such marketing communication.

3.4 Obligations of the Covered Entity. With regard to the use or disclosure of Protected Health Information by Business Associate, the Covered Entity hereby agrees to notify Business Associate of any arrangements permitted or required of Covered Entity that may impact in any manner the use or disclosure of Protected Health Information by Business Associate.

3.5 [Optional] Compliance with the Massachusetts Data Breach Notification Law and Other State Notification Laws. Without limiting any other obligations under this Agreement:

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- (a) Business Associate agrees to cooperate in good faith with Covered Entity with respect to compliance with all applicable requirements under the Massachusetts Data Breach Notification Law set forth at M.G.L. Ch. 93H and the regulations promulgated thereunder, including without limitation 201 CMR 17 et seq., as the same may be amended from time to time. Accordingly, Business Associate will report to the designated Privacy Official of Covered Entity any Breach of Security with respect to any Personal Information created or received by Business Associate from or on behalf of Covered Entity of which Business Associate becomes aware. Oral reports shall be made within two (2) business days following discovery, and shall be followed promptly by a written report based on subsequently developed information.
- (b) Business Associate hereby represents and warrants that it has developed and continues to maintain a comprehensive written information security program that is consistent with industry standards, that reflects the size and type of Business Associate's business as well as the volume and nature of its stored data, and that contains administrative, technical, and physical safeguards to ensure the security and confidentiality of any Personal Information created or received by Business Associate from or on behalf of Covered Entity.
- (c) If in the course of performing Services for Covered Entity, Business Associate collects or maintains information about persons who are not residents of the Commonwealth of Massachusetts, and such information is classified as "personal information" under the laws of the state or nation in which such person resides, then:
 - (i) Business Associate shall provide notice to Covered Entity of any breach of such personal information in the manner set forth in subsection (a) of this Section 3.4.
- (d) Business Associate shall be responsible for any and all costs associated with responding to and mitigating a breach of personal information held or maintained by Business Associate, including but not limited to investigation costs, mailing costs, call center costs, personnel costs, attorneys' fees, and other related expenses or costs associated with Covered Entity's compliance with such laws.

4. TERM AND TERMINATION

- 4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section 4. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 4.3 herein.
- 4.2 Termination for Cause. As provided in 45 C.F.R. §164.314(a)(2)(i)(D) and §164.504(e)(2)(iii), Covered Entity may immediately terminate this Agreement and any related agreements, if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Covered Entity may choose to provide

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Business Associate with written notice of the alleged breach and afford Business Associate an opportunity to cure said breach to the satisfaction of Covered Entity within fourteen (14) calendar days after Business Associate's receipt of such notice. Failure to cure in the manner set forth in this Section is grounds for immediate termination of this Agreement and any related agreements.

4.3 Effect of Termination.

- (a) Except as provided in Section 4.3(b) below, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

5. CONFIDENTIALITY

In the course of performing under this Agreement, each Party may receive, be exposed to or acquire Confidential Information including, but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identifiable as confidential ("Confidential Information") of the other Party. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. The parties, including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (ii) shall only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement and the Agreement, and (iii) shall advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything herein to the contrary, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party, (b) which is later publicly released by either Party in writing, (c) which is lawfully obtained from third parties without restriction, or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

6. [OPTIONAL] INDEMNIFICATION

Business Associate will indemnify and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including civil monetary penalties, attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted Use or Disclosure of Protected Health Information or other breach of this Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

- (a) **Right to Tender or Undertake Defense.** If Covered Entity is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted Use or Disclosure of Protected Health Information or other breach of this Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control, Covered Entity will have the option at any time either to: (i) tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys to represent Covered Entity's interests at Business Associate's expense; or (ii) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.
- (b) **Right to Control Resolution.** Covered Entity will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Covered Entity may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Covered Entity under Section 6 of this Agreement.

7. MISCELLANEOUS

- 7.1 **Integration of Terms and Conditions.** This Agreement shall be and hereby is incorporated into the provisions of the Agreement. Any provisions of the Agreement and other related documents not inconsistent herewith shall also apply to this Agreement as if they were one and the same document. In the event of any inconsistencies as to matters addressed in this Agreement, the terms and conditions of this Agreement shall prevail.
- 7.2 **Relationship of Parties.** Business Associate, in furnishing services pursuant to the Agreement and other related documents thereunder, is acting as an independent contractor, and Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Business Associate under this Agreement. Business Associate is not an agent of Covered Entity, and has no authority to represent Covered Entity as to any matters, except as expressly authorized in this Agreement.
- 7.3 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under Sections 4, 5 and 6 of this Agreement shall survive the termination of this Agreement indefinitely.

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- 7.4 Waiver. A failure of either Covered Entity or Business Associate to enforce any term, provision or condition of this Agreement, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein. In no way whatsoever shall a waiver of any term, provision or condition of this Agreement be valid unless in writing, signed by the waiving party, and only to the extent set forth in such writing.
- 7.5 Interpretation; Regulatory References. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the Privacy Regulations and the Security Regulations. Any reference in this Agreement to a section in the Privacy Regulations, or the Security Regulations means the section as in effect or as amended.
- 7.6 Amendment to Agreement. Except as otherwise referenced in this Agreement, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of both Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations, the Security Regulations, and any and all amendments set forth in the HITECH Act and any attendant HITECH Act regulations or guidance. The Parties agree to negotiate in good faith any amendments to this Agreement deemed necessary by Covered Entity. Upon the effective date of any final regulation or amendment to final regulation promulgated by the U.S. Department of Health and Human Services with respect to Protected Health Information that affects Covered Entity's relationship with Business Associate, this Agreement will automatically amend and be interpreted such that the obligations they impose on Business Associate remain in compliance with these regulations.
- 7.7 Change in Law. Notwithstanding Section 7.6 or anything to the contrary contained in this Agreement, at Covered Entity's discretion, upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or of the State of Massachusetts relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend the Service Agreement and this Agreement in such manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of the Covered Entity's notice. If the parties are unable to agree on an amendment after engaging in reasonable negotiations within thirty (30) days thereafter, either of them may terminate the Service Agreement or this Agreement by written notice to the other.
- 7.8 Severability. If any provisions of this Agreement are unenforceable, invalid or violate applicable law, such provisions shall be deemed stricken and shall not affect the enforceability of any other provisions of this Agreement.
- 7.9 Notices. Any notices to be given hereunder to a Party shall be made via certified mail or express courier to such Party's address given below or via facsimile to the facsimile telephone numbers listed below:

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If to Business Associate:

Attn: _____

Fax: _____

with a copy to:

Attn: _____

Fax: _____

If to Covered Entity:

Attn: _____

Fax: _____

with a copy to:

Attn: _____

Fax: _____

- 7.10 Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, not including, however, the rules relating to the choice or conflict of laws.
- 7.11 Conflicts. The terms and conditions of this Agreement will override and control any conflicting term or condition of any other agreement entered into between Covered Entity and Business Associate. All nonconflicting terms and conditions of any other agreement entered into between Covered Entity and Business Associate remain in full force and effect.
- 7.12 No Third-Party Beneficiaries. No third-parties are intended to benefit from this Agreement and no third-party beneficiary rights will be implied from anything contained in this Agreement.
- 7.13 Independent Relationship. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between Covered Entity and Business Associate other than that of independent parties contracting with each other as independent contractors solely for the purposes of effecting the provisions of this Agreement.
- 7.14 Successor and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by any party without the prior written consent of the other party.
- 7.15 Counterparts; Facsimiles. For the convenience of the Parties, this Agreement may be executed in two or more identical counterparts, all of which together shall constitute one agreement. One or more counterparts of this Agreement may be delivered via facsimile, with the intention that they shall have the same effect as an original counterpart.

[Signatures on following page.]

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IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the date first set forth above.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____
Name:
Title:

By: _____
Name:
Title

AM 23850592.1