HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between *Company* ("Covered Entity"") and _____ ("Business Associate) as of the ___ day of _____, 20__ (the "Effective Date").

RECITALS

A. WHEREAS, *Company* is a "Covered Entity" as defined under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act (Division A, Title XIII and Division B, Title IV of Public L. 111–5) (which was part of the American Recovery and Reinvestment Act of 2009 ("ARRA")), and _____ is a "Business Associate" as defined under HIPAA and HITECH; and

B. WHEREAS, in connection with the [name of agreement] between Covered Entity and Business Associate for Business Associate to provide [certain services] for and on behalf of Covered Entity (the "Agreement"), Covered Entity may provide Business Associate with Protected Health Information (defined below); and

C. WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this BAA, which is drafted to satisfy specific components of HIPAA and relevant implementing regulations, including the Privacy Rule (defined below), the Security Rule (defined below) and the Breach Notification Rule (defined below).

NOW, THEREFORE, In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. DEFINITIONS

a. "Breach" shall have the meaning given to such term in 45 C.F.R. § 164.402.

b. "Breach Notification Rule" shall mean the interim final rule related to breach notification for unsecured protected health information at 45 C.F.R. Parts 160 and 164.

c. "Business Associate" shall have the meaning given to such term in 45 C.F.R. § 160.103.

d. "Covered Entity" shall have the meaning given to such term in 45 C.F.R. § 160.103.

e. "Designated Record Set" shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.501.

f. "Electronic protected health information" or ("EPHI") shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. § 160.103.

g. "Individual" shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. Section 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

h. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and Part 164, Subparts A and E.

i. "Protected Health Information" or "PHI" shall have the meaning given to such term under the Privacy and Security Rules at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

j. "Required by Law" shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. Section 164.103.

k. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. § 164 Subparts A and C.

l. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

m. "Security Incident" shall have the meaning given to such phrase under the Security Rule at 45 C.F.R. § 164.304.

n. "Unsecured PHI" shall have the meaning given to such phrase under the Breach Notification Rule at 45 C.F.R. § 164.402.

o. Other terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the Privacy, Security or Breach Notification Rules.

2. PRIVACY RULE PERMITTED USES AND DISCLOSURES OF BUSINESS ASSOCIATE

a. Permitted Uses and Disclosures of PHI. Except as provided in Paragraphs (b), (c), and (d), below, Business Associate may only use or disclose PHI to perform functions, activities or services for, or on behalf of Covered Entity, as specified in the Agreement.

b. Use for Management and Administration. Except as otherwise limited in this BAA, Business Associate may, consistent with 45 C.F.R. 164.504(e)(4), use PHI if necessary (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate.

c. Disclosure for Management and Administration. Except as otherwise limited in this BAA, Business Associate may, consistent with 45 C.F.R. 164.504(e)(4), disclose Protected Health Information for the proper management and administration of Business Associate, provided (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed ("Person") that it will be held confidentially and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the Person, and that the Person agrees to immediately notify Business Associate in writing of any instances of which it becomes aware in which the confidentiality of the information has been breached or is suspected to have been breached.

d. Reporting Violations. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502(j)(1).

3. PRIVACY RULE AND HITECH ACT OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Limitations on Disclosure. Business Associate shall not use or disclose PHI other than as permitted or required by this BAA, the Agreement, or as Required by Law. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule, the Agreement, and this BAA.

b. Appropriate Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement and this BAA or as Required by Law.

c. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of HIPAA, the Agreement, or this BAA.

d. Reporting of Improper Use or Disclosure. Business Associate shall report to Covered Entity in writing any use or disclosure of Protected Health Information not provided for by the BAA within five (5) days of becoming aware of such use or disclosure.

e. Business Associate's Agents and Independent Contractors. Business Associate shall ensure that any third party, including a subcontractor or agent, to whom Business Associate provides any Protected Health Information, agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such Protected Health Information.

f. Access to PHI. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under the Privacy Rule at 45 C.F.R. § 164.524.

g. Amendment of PHI. Business Associate shall make any Protected Health Information contained in a Designated Record Set available to Covered Entity (or an Individual as directed by Covered Entity) for purposes of amendment per 45 C.F.R. § 164.526. Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to the Privacy Rule, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity. If an Individual requests an amendment of Protected Health Information directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of receiving such request. Any denial of amendment of Protected Health Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.

h. Accounting of Disclosures. Business Associate shall provide to Covered Entity in the time and manner designated by Covered Entity, the information necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business

Associate shall provide a copy of such request to Covered Entity, in writing, within five (5) days of Business Associate's receipt of such request.

i. Documentation of Disclosures. Business Associate shall document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Health Information and, if known, the address of the entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

j. Retention of Protected Health Information. Notwithstanding Section 6(c) of this BAA, Business Associate and its subcontractors or agents shall retain all Protected Health Information throughout the term of the Agreement and shall continue to maintain the information required under Section 3(h) this BAA for a period of six (6) years after termination of the Agreement.

k. Governmental Access to Records. Business Associate shall make its internal practices, books and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary and Covered Entity for purposes of determining Covered Entity's compliance with the Privacy Rule as applicable.

l. Minimum Necessary. Business Associate shall only request, use and disclose the Minimum Necessary amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

n. HITECH Act Provisions. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to Business Associate and are incorporated herein by reference. In the event the Secretary issues regulations that require specific modifications to business associate agreements related to these provisions, the parties agree to take such action as is necessary to amend this Agreement to meet the requirements of these provisions of the HITECH Act.

4. SECURITY RULE AND HITECH ACT OBLIGATIONS OF BUSINESS ASSOCIATE

a. Business Associate Obligations. Business Associate shall implement the requirements set forth in this Section 4 with regard to EPHI.

b. Safeguards. Business Associate shall have in place Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity pursuant to the BAA. Also, 45 C.F.R. sections 164.308, 164.310, 164,312 and 164.316, which relate to security, shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

c. Subcontractors. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect such EPHI.

d. Security Incident/Breach Notification Reporting. Business Associate shall report any Security Incident promptly upon becoming aware of such incident. Separate from the requirements related to Security Incident reporting, Business Associate shall also make the reports set forth below in Section 5, related to a Breach of Unsecured PHI.

e. HITECH Act Provisions. The additional requirements of Subtitle D of the HITECH Act that relate to security and that are made applicable with respect to Covered Entities shall also be applicable to Business Associate and are incorporated herein by reference. In the event the Secretary issues regulations that require specific modifications to business associate agreements related to these provisions, the parties agree to take such action as is necessary to amend this Agreement to meet the requirements of these provisions of the HITECH Act.

5. BREACH NOTIFICATION (FEDERAL AND STATE) RULE OBLIGATIONS OF BUSINESS ASSOCIATE

a. HIPAA Breach Notification and Mitigation.

(i) Business Associate shall implement reasonable systems for the discovery and prompt reporting of any Breach of Unsecured PHI to affected individuals.

(ii) Immediately following the Business Associate's discovery of a Breach, or upon the Business Associate's reasonable belief that a Breach has occurred, Business Associate shall provide written notification, as required in Sections 5(a)(iv) this BAA, to Covered Entity

(iii) For purposes of reporting a Breach to Covered Entity, the discovery of a Breach shall occur as of the first day on which such Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to or suspected by the Business Associate. Business Associate will be considered to have had knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known to any person (other than the person committing the Breach) who is an employee, officer or agent of the Business Associate.

(iv) Immediately following the Business Associate's discovery of a Breach (or upon the Business Associate's reasonable belief that a Breach has occurred), Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide to Covered Entity all available information that the Covered Entity is required to include in its notification to the individual pursuant to the Breach Notification Rule, including but not limited to: (1) contact information for individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, street address, phone number, email address); (2) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery of the Breach; (3) a description of the types of unsecured PHI involved in the Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (4) a brief description of what the Business

Associate has done or is doing to investigate the Breach, mitigate harm to the individual impacted by the Breach, and protect against future Breaches; and (5) contact information for a liaison appointed by the Business Associate with whom Covered Entity may ask questions and learn additional information concerning the Breach. Following a Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the Breach, including but not limited to the information described in items (1) through (5), above.

(v) Business Associate shall: (1) cooperate and assist Covered Entity with any investigation into any Breach or alleged Breach by Business Associate; (2) cooperate and assist Covered Entity with any investigation into any Breach or alleged Breach conducted by any State Attorney General or State agency (or their respective agents); (3) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the Breach; and (4) as directed by the Covered Entity, assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General, or their respective agents, to notify individuals impacted or potentially impacted by a Breach.

b. Breach Notification and Mitigation Under Other Laws.

(i) In addition to the requirements of Section 5(a) of this BAA, Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information.

(ii) Immediately following the Business Associate's discovery of a State Breach, or upon the Business Associate's reasonable belief that a State Breach has occurred, Business Associate shall provide written notification, as required in Sections 5(a)(iv) of this BAA, to Covered Entity.

(iii) For purposes of reporting a State Breach to Covered Entity, the discovery of a State Breach shall occur as of the first day on which such State Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to or suspected by the Business Associate. Business Associate will be considered to have had knowledge of a State Breach if the State Breach is known, or by exercising reasonable diligence would have been known to any person (other than the person committing the State Breach) who is an employee, officer or agent of the Business Associate.

(iv) Business Associate shall: (1) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (2) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State agency (or their respective agents); (3) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (4) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State agency (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.

6. TERM AND TERMINATION

a. Term. The term of this BAA shall commence as of the Effective Date, and shall terminate when 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 provisions of this Section.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of the terms of this BAA by Business Associate, Covered Entity shall:

(i) Provide an opportunity for Business Associate to cure, and, if Business Associate does not cure the breach within thirty (30) days, Covered Entity may immediately terminate this BAA and the Agreement;

(ii) Immediately terminate this BAA and the Agreement if Covered Entity has determined that (a) Business Associate has breached a material term of this BAA, and (b) cure is not possible;

(iii) Immediately terminate this BAA if the Agreement has been terminated; or

(iv) If Covered Entity determines that neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

(i) Except as provided in paragraph (ii) of this Section 6(c), upon termination of this BAA 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, and shall retain no copies of the Protected Health Information except as required by the Agreement. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

(ii) 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 BAA 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.

7. MISCELLANEOUS

a. Regulatory References. A reference in this BAA to a section in the Privacy, Security, or Breach Notification Rule means the section as in effect or as amended, and for which compliance is required.

b. Survival. The respective rights and obligations of Business Associate under Section 6(c) of this BAA shall survive the termination of the BAA.

c. No Third Party Beneficiaries. Nothing express or implied in this BAA 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.

d. Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy, Security or Breach Notification Rule as well as HIPAA and the HITECH Act.

e. Effect on Agreement. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

f. Interpretation. The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy, Security, and Breach Notification Rules, as well as HIPAA and the HITECH Act.

g. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA is satisfactory for Business Associate to comply with any obligations it may have under HIPAA, the Privacy Rule, or any other applicable law or regulation pertaining to the confidentiality, use or safeguarding of health information. Business Associate is solely responsible for all decisions it makes regarding the use, disclosure or safeguarding of PHI.

h. Indemnification.

(i) Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns ("Covered Entity Indemnitees") harmless, from and against any and all losses, claims, actions, demands, liabilities, damages, costs and expenses (including but not limited to costs of providing notifications and credit monitoring services to individuals pursuant to the Breach Notification Rule and State data breach notification laws, administrative costs associated with Covered Entity's and Business Associate's compliance with Breach Notification Rule and State data breach notification laws, judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Costs") arising from or related to: (1) any breach of this BAA by Business Associate, including but not limited to the use or disclosure by Business Associate of Individually Identifiable Information (including PHI) in violation of the terms of this BAA or applicable law; and (2) whether in oral, paper or electronic media, any Breach of unsecured PHI or State Breach of Individually Identifiable Information by Business Associate.

(ii) If Business Associate assumes the defense of any claim, action, or government investigation associated with a Breach or a breach under a State data breach notification law, Covered Entity shall have the right, at Business Associate's expense, to participate in the defense of such claim, action, or government investigation. Business Associate shall not take any final action with respect to any claim, action, or government investigation associated with a Breach or a breach under a State data breach notification law without the prior written consent of Covered Entity, which consent shall not be unreasonably withheld. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Business Associate's subcontractors in furnishing

services to Business Associate as if they were the Business Associate's own acts, failures or omissions. The obligations set forth in this Section 7(h) shall survive termination of this BAA, regardless of the reasons for termination.

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the Effective Date.

Company	Business Associate
Sign_____	Sign_____
Print_____	Print_____
Title_____	Title_____
Date_____	Date_____