**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE Agreement (“Agreement”) is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“BUSINESS ASSOCIATE”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“SUBCONTRACTOR”).

**RECITALS**

1. The purpose of this Agreement is to comply with the HIPAA Privacy and Security regulations found at 45 C.F.R. Part 160 and 45 C.F.R. Part 164. This agreement is written to comply with the revisions enacted in the HITECH statute in February 2009, the regulation changes published in August 2009 and further updates published January 25, 2013.
2. Terms used in this agreement, including but not limited to “covered entity”, “business associate”, “Protected Health Information (PHI)”, “unsecured protected health information”, “use”, “disclose”, “breach”, and “security incident”, shall have the same meaning as defined in most current versions of the above referenced regulations.
3. Per the January 25, 2013 HIPAA Regulation changes, BUSINESS ASSOCIATE is also regulated by the HIPAA regulations, and further agrees to comply with the unique requirements of this agreement.
4. SUBCONTRACTOR is also a “business associate" as defined and regulated by HIPAA and is a business associate of BUSINESS ASSOCIATE.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. **Allowed Uses and Disclosures of Protected Health Information**. The SUBCONTRACTOR provides services for the BUSINESS ASSOCIATE. The SUBCONTRACTOR may use and disclose protected health information only as follows:
	1. SUBCONTRACTOR may use and disclose protected health information for the purposes specifically provided in Attachment A – Permitted Uses and Disclosures. In performance of the tasks specified in Attachment A – Permitted Uses and Disclosures, SUBCONTRACTOR may disclose PHI to its employees, subcontractors and agents, in accordance with the provisions of this agreement.
	2. SUBCONTRACTOR may further use and disclose PHI, if necessary:
		1. for the proper management and administration of the BUSINESS ASSOCIATE’s business, and/or
		2. to carry out the legal responsibilities of the SUBCONTRACTOR if the disclosure is either
			1. required by law, or
			2. SUBCONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 notifies the SUBCONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.
2. **Obligations and Responsibilities of SUBCONTRACTOR in Handling PHI**. With regard to its use and disclosure of protected health information, SUBCONTRACTOR agrees to do the following:
	1. Use and/or disclose the protected health information only as permitted by this Agreement or as otherwise required by law. No further use or disclosure is permitted.
	2. SUBCONTRACTOR may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by BUSINESS ASSOCIATE.
	3. Use appropriate physical, technical and administrative safeguards and comply with the requirements of the HIPAA Security Regulations (45 CFR § 164 Subpart C) (which are applicable to business associates) to prevent use or disclosure of PHI other than as provided for by the Agreement.
	4. Report to the BUSINESS ASSOCIATE any security incident, and any use or disclosure of PHI not provided by this contract, including breaches of unsecured protected health information as required by 45 C.F.R § 164.410 within 10 days. Upon notification of a security incident, SUBCONTRACTOR shall provide its preliminary risk assessment, as required by 45 CFR § 164.402(2), to BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall make final determinations regarding the risk assessment.
	5. Require that subcontractors who create, receive, maintain or transmit ePHI on behalf of Business Associate comply with applicable HIPAA Security regulations by entering into a Business Associate contract with these subcontractors. The Business Associate contract shall meet the specifications of 45 CFR § 164.314.
	6. Make available to the Individual any requested protected health information, in accordance with procedures specified by BUSINESS ASSOCIATE and in compliance with 45 CFR § 164.524, “Access of individuals to protected health information”.
	7. Make available for amendment and incorporate any amendments to protected health information in accordance with the requirements of 45 CFR § 164.526, “Amendment of protected health information”.
	8. Maintain and make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528.
	9. To the extent that SUBCONTRACTOR is to carry out BUSINESS ASSOCIATE’s obligations under the HIPAA Privacy Regulations, 45 CFR § 164 Subpart E, comply with the requirements of the Privacy Regulations in the performance of those obligations.
	10. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining the BUSINESS ASSOCIATE’s compliance with the HIPAA regulations, subject to attorney-client and other applicable legal privileges.
	11. Return to the BUSINESS ASSOCIATE or destroy, as requested by the BUSINESS ASSOCIATE, within 30 days of the termination of this Agreement, the protected health information in SUBCONTRACTOR’s possession and retain no copies or electronic back-up copies of protected health information. If this is not feasible, SUBCONTRACTOR will limit further uses and disclosures to the reason that return/destruction is not feasible, and to extend the protections in this agreement for as long as the protected health information is in its possession.
3. **Mutual Representation and Warranty**. Each party represents and warrants to the other party that all of its employees, agents, representatives and members of its work force, whose services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligations to fully comply with all provisions of this Agreement.
4. **Term and Termination**.
	1. Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, unless terminated as provided in this Agreement herein or by written mutual agreement of the parties.
	2. As provided for under 45 C.F.R. § 164.504, the BUSINESS ASSOCIATE may immediately terminate this Agreement and any related agreement if it determines that the SUBCONTRACTOR has breached a material provision of this Agreement. Alternatively, the BUSINESS ASSOCIATE may choose to: (i) provide the SUBCONTRACTOR with 30 days written notice of the existence of an alleged material breach; and (ii) afford the SUBCONTRACTOR an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement.
5. **Survival**. The respective rights and obligations of SUBCONTRACTOR and BUSINESS ASSOCIATE under the provisions of paragraph 2K above, detailing SUBCONTRACTOR’s return of and/or ongoing protections of protected health information, shall survive the termination of this Agreement.
6. **Amendment**. This Agreement supersedes any previously negotiated HIPAA Business Associate agreements. Further, it may be modified or amended only in writing as agreed to by each party.
7. **Indemnification**. SUBCONTRACTOR agrees to reimburse BUSINESS ASSOCIATE for all costs reasonably associated with a breach of the confidentiality protected health information which SUBCONTRACTOR is responsible for. Costs reasonably associated with a breach include, but are not limited to, regulatory fines, costs of breach notification, costs of breach mitigation and legal costs.
8. **Notices**. Any notices to be given hereunder shall be made via U.S. mail or express courier, or hand delivery to the other party’s address given below as follows:

If to SUBCONTRACTOR: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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If to BUSINESS ASSOCIATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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| **SUBCONTRACTOR** | **BUSINESS ASSOCIATE** |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Attachment A – Permitted Uses and Disclosures**

SUBCONTRACTOR is authorized to use protected health information for the purposes of:

[INSERT A CLAUSE THAT DESCRIBES SUBCONTRACTOR’S ALLOWED USES AND DISCLOSURES. THIS WILL VARY DEPENDING ON THE NATURE OF THE RELATIONSHIP.]