**Business Associate Agreement**

This business associate agreement is entered into as of the date when fully executed between Organization Name, a Covered Entity (“Organization”), and Business Associate Company Name (“Business Associate”), for purposes of compliance with federal law, as set forth below.

Organization may provide Business Associate with certain information that may include protected health information, so that Business Associate may perform its responsibilities pursuant to its underlying agreement(s), \_\_\_\_\_\_\_\_Name of Agreement\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with and on behalf of Organization. Organization and Business Associate intend to protect the privacy of protected health information and provide for the security of any electronic protected health information received by Business Associate from Organization, or created, received, or transmitted by Business Associate on behalf of Organization in compliance with the Administrative Simplification portion of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Part 160 and Part 164. Federal regulations promulgated pursuant to HIPAA, at 45 CFR § 164.314, 45 CFR § 164.502(e) and 45 CFR § 164.504(e) require Organization, as a covered entity under HIPAA, to enter into written agreements with all business associates.

The parties therefore agree as follows:

## DEFINITIONS

For purposes of this agreement, the following definitions apply:

**1.1 Breach.** “Breach” has the same meaning as provided in 45 CFR § 164.402 and any implementing guidance and/or regulations, except that for purposes of this agreement, a Breach includes a non-permitted acquisition, access, use, or disclosure of PHI without regard to any assessment or determination by the Business Associate as to whether such non-permitted acquisition, access, use, or disclosure compromises the security or privacy of the PHI.

**1.2 Business Associate.** “Business Associate” means Business Associate Company Name and includes all Workforce members and Subcontractors of Business Associate.

**1.3 Covered Entity.** “Covered Entity” means Organization and includes all Workforce members of Covered Entity.

**1.4 Designated Record Set.** “Designated Record Set” has the same meaning provided in 45 CFR § 164.501.

**1.5 Disclosure Record.** “Disclosure Record” means a documented record of disclosures of PHI and information related to such disclosures.

**1.6 Electronic PHI.** “Electronic PHI” has the same meaning provided in 45 CFR § 160.103, limited to the electronic information created, maintained, received, or transmitted by Business Associate from or on behalf of Covered Entity.

**1.7 HHS.** “HHS” means the Department of Health and Human Services.

**1.8 HIPAA.** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

**1.9 HIPAA Rules.** “HIPAA Rules” means the Administrative Data Standards and Related Requirements at 45 CFR Part 160 and Part 164.

**1.10 Individual.** “Individual” has the same meaning provided in 45 CFR § 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

**1.11 Limited Data Set.** “Limited Data Set” has the same meaning as provided in 45 CFR § 164.514(e)(2).

**1.12 Privacy Rule.** “Privacy Rule” means the Administrative Data Standards and Related Requirements at 45 CFR Part 160 and Part 164, Subparts A and E.

**1.13 Protected Health Information.** “Protected Health Information” and “PHI” have the same meaning provided in 45 CFR § 160.103, limited to the information created, maintained, received, or transmitted by Business Associate from or on behalf of Covered Entity.

**1.14 Required by Law.** “Required by Law” has the same meaning provided in 45 CFR § 164.103 and as defined by any applicable Your State law or regulation that is not preempted by HIPAA.

**1.15 Secretary.** “Secretary” means the Secretary of HHS or any other officer or employee of HHS to whom the authority involved has been delegated.

**1.16 Security Breach.** “Security Breach” has the same meaning as the term “Breach” provided in 45 CFR § 164.402, and means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI.

**1.17 Security Incident.** “Security Incident” means the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

**1.18 Security Rule.** “Security Rule” means the Administrative Data Standards and Related Requirements at 45 CFR **Part** 160 and Part 164, Subparts A and C.

**1.19 Subcontractor.** “Subcontractor” means a person, trust or estate, partnership, corporation, professional association or corporation, or other entity delegated by Business Associate to perform a function, activity, or service for or on behalf of Business Associate other than in the capacity of a member of the Workforce of such Business Associate.

**1.20 Unsecured PHI.** “Unsecured PHI” has the same meaning provided in 45 CFR §164.402.

**1.21 Workforce.** “Workforce” has the same meaning provided in 45 CFR § 160.103.

## **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Business Associate acknowledges and agrees that it is obligated by law, or will be obligated upon the effective date of any portion thereof, to meet the applicable provisions of the HIPAA Rules, and such provisions are incorporated herein and made a part of this agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by HHS with respect to the HIPAA Rules that relate to the obligations of business associates shall be deemed incorporated into and made a part of this agreement.

Business Associate shall not use or disclose PHI other than as permitted or required by this agreement or as required by Law.

2.1 Business Associate shall develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this agreement. Business Associate shall develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI. Business Associate shall also develop and implement policies and procedures and meet the Security Rule documentation requirements as and at such time as may be required by HIPAA at 45 CFR Part 164, Subpart C.

2.2 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 this agreement.

2.3 Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate to provide a service to the Covered Entity agrees to the same restrictions and conditions that apply through this agreement to Business Associate with respect to such information in accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2). Business Associate shall ensure that any Subcontractor to whom it provides PHI agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI. Business Associate shall notify Covered Entity in writing within ten business days of shipping, transferring, or otherwise transmitting PHI in any form or by any means to any Subcontractor that is located outside the United States or any territory under the jurisdiction of the United States government.

2.4 At the request of Covered Entity, Business Associate shall provide Covered Entity or, as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524.

2.5 At the written request of Covered Entity, or as directed by Covered Entity, at the written request of an Individual, Business Associate shall make any amendment to PHI in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.

2.6 Business Associate shall make its internal practices, books, records, policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures will be held in strictest confidence by the Covered Entity. Business Associate shall provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.

2.7 Business Associate shall maintain a Disclosure Record in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall further provide any additional information where required by the HIPAA Rules and any implementing regulations and/or guidance. Unless otherwise provided under the HIPAA Rules, Business Associate shall maintain the Disclosure Record with respect to each disclosure for at least six years following the date of the disclosure.

2.8 Business Associate shall provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an accounting of disclosures of PHI in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by the HIPAA Rules and any implementing regulations and/or guidance, Business Associate shall provide such accounting directly to the Individual.

2.9 When using or disclosing PHI or when requesting PHI from or on behalf of Covered Entity, Business Associate shall, where required by the HIPAA Rules, utilize a Limited Data Set, if practicable. Otherwise, Business Associate shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with, and unless excepted from the minimum necessary limitation in 45 CFR § 164.502(b). Where required by the HIPAA Rules, Business Associate will determine, based on its reasonable judgment, what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.

2.10 Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except as permitted by any applicable provisions of HIPAA and Business Associate’s underlying agreement with Covered Entity.

2.11 Business Associate shall promptly report to Covered Entity any use or disclosure of PHI that is not permitted by this agreement of which Business Associate becomes aware. Business Associate shall promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.

2.12 In addition to the requirements of section 2.11, Business Associate shall report to Covered Entity, following discovery and without unreasonable delay, but in no event later than five business days following discovery, any Breach of Unsecured PHI in accordance with 45 CFR § 164.410. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity’s obligations under any applicable provisions of HIPAA and any other applicable security breach notification laws, including but not limited to providing Covered Entity with such information in addition to Business Associate’s report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making a risk assessment to determine if there is a low probability that the PHI has been compromised in accordance with 45 CFR § 164.402(2).

2.12.1 For purposes of this section 2.12, discovery of a Breach by Business Associate is deemed to have occurred as of the first day on which such Breach is known to Business Associate exercising reasonable diligence. Business Associate is deemed to have knowledge of a Breach if the Breach is known to any person, other than the person committing the Breach, who is an employee having managerial responsibilities, an officer, or other management agent of Business Associate.

2.12.2 Business Associate’s report under this section 2.12 must, to the extent available at the time the initial report is required or as promptly thereafter as such information becomes available, include:

2.12.2.1 The identification (if known) of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during such Breach;

2.12.2.2 A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;

2.12.2.3 A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);

2.12.2.4 The identity of the individual(s) who made and who received the unauthorized acquisition, access, use, or disclosure;

2.12.2.5 A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and

2.12.2.6 Contact information for Business Associate’s representatives that have knowledge about the Breach.

2.12.3 Business Associate shall maintain (for a period of six years after such determination) documentation to demonstrate the basis for any determination by Business Associate that a nonpermitted acquisition, access, use, or disclosure of PHI is not a Breach because:

2.12.3.1 As provided in 45 CFR § 164.402(1)(i), the acquisition, access, or use was made unintentionally, in good faith, and within the scope of the person’s authority by a Workforce member or person acting under authority of Business Associate, and did not result in further use or disclosure in a manner not permitted by the Privacy Rule;

2.12.3.2 As provided in 45 CFR § 164.402(1)(ii), the disclosure was made inadvertently by a person authorized to access PHI at the same Business Associate and the information disclosed was not further used or disclosed in a manner not permitted by the Privacy Rule; or

2.12.3.3 As provided in 45 CFR § 164.402(1)(iii), Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.13 To the extent the Business Associate is to carry out one or more of Covered Entity’s obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation(s).

## PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise provided in this agreement, Business Associate may use or disclose PHI, consistent with the Privacy Rule, as follows:

3.1 Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity if Business Associate’s use or disclosure of PHI would not violate the HIPAA Rules if done by Covered Entity.

3.2 Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

3.3 Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if:

3.3.1 Disclosure is Required by Law; or

3.3.2 Business Associate obtains reasonable assurances from the recipient to whom the PHI is disclosed that the PHI will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed, and the recipient agrees to promptly notify Business Associate of any known breaches of the confidentiality of the PHI.

3.4 Business Associate may use PHI to create de-identified health information consistent with the standards and requirements of 45 CFR § 164.514(a)-(c).

3.5 Business Associate may use and disclose PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

3.6 Business Associate may disclose PHI to appropriate Federal and State authorities as provided by 45 CFR § 164.502(j)(1).

## OBLIGATIONS OF COVERED ENTITY

4.1 Covered Entity shall notify Business Associate of any limitations on uses or disclosures described in its notice of privacy practices in accordance with 45 CFR § 164.520(b)(2), to the extent that such limitations may affect Business Associate’s use or disclosure of PHI.

4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate use or disclosure of PHI.

4.3 Covered Entity shall notify Business Associate of any restriction of the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

4.4 Covered Entity shall notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity pursuant to 45 CFR § 164.522, to the extent that such alternative means or locations may affect Business Associate’s use or disclosure of PHI.

4.5 Except as otherwise provided in this agreement, Covered Entity shall not ask Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

4.6 Covered Entity shall provide notification to Individuals, media, and the Secretary following the discovery of a breach of Unsecured PHI in accordance with the HIPAA Rules.

## TERM, TERMINATION AND BREACH

5.1 This agreement is effective when fully executed and will terminate upon expiration of the underlying service agreement, or with cause as provided in sections 5.2.1 or 5.2.2.

5.2 Either party may take any one or more of the following steps upon its determination that the other party has committed a violation or material breach of this agreement.

5.2.1 Provide the party in violation or material breach with a reasonable date to end the violation or cure the material breach, and terminate this agreement if the party in violation or material breach does not end the violation or cure the material breach by the specified date;

5.2.2 Immediately terminate this agreement if a cure of the material breach is not possible; or, 5.2.3 If neither termination nor cure is feasible, elect to continue this agreement and report the violation or material breach to the Secretary.

5.3 Except as provided in section 5.3.1, upon termination of this agreement for any reason, Business Associate shall return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision also applies to PHI that is in the possession of any Subcontractors of Business Associate. Business Associate, and any Subcontractors of Business Associate, shall not retain copies of PHI.

5.3.1 If Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate shall extend the protections of this agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## MISCELLANEOUS

6.1 The parties shall take any action necessary to amend this agreement from time to time as may be necessary for either party to comply with the requirements of the HIPAA Rules and any other implementing regulations and/or guidance.

6.2 Notwithstanding the termination of this agreement or any renewal period, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such termination will survive, including but not limited to section 5.3 of this agreement.

6.3 In the event the terms of this agreement conflict with the terms of any other agreement between Covered Entity and Business Associate, then the terms of this agreement will prevail.

6.4 Notices and requests provided for under this agreement will be made in writing to Covered Entity at:

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Notice and requests provided for under this agreement will be made in writing to Business Associate at:

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6.5 Covered Entity has the right, with prior written notice, to inspect any facilities, systems, policies and procedures, and records of Business Associate relating to the use or disclosure of Electronic PHI, or to audit Business Associate, to determine whether Business Associate is in compliance with the terms of this agreement. However, this provision does not obligate Covered Entity to conduct any such inspection or audit.

6.6 Nothing in this agreement is deemed to create an association, trust, partnership, agency, joint venture or other entity or similar legal relationship between the parties. Neither party, including its employees, agents and representatives, are deemed or will claim to be an employee, agent or representative of the other party; nor make any representations or warranties, or assume any obligations, on the other party’s behalf.

6.7 Nothing in this agreement provides or is intended to provide any benefit to any third party.

6.8 Each party shall indemnify and hold harmless the other party, its subsidiaries and affiliates, and any officer, director, employee, or agent from and against all third party claims, demands, loss, damages, costs, and expenses, including reasonable attorney fees, relating to any personal injury, death, or damage to any real or tangible property resulting from the negligence, willful misconduct, wrongful act, breach of this agreement, or violation of the HIPAA Rules or any other statutory or regulatory requirements by the indemnifying party, its employees, agents, or subcontractors.

6.9 If any provision of this agreement is declared or found to be illegal, invalid, or unenforceable for any reason, then the parties will be relieved of all obligations arising under such provision only to the extent that such provision is illegal, invalid, or unenforceable, and the remainder of this agreement will remain in full force and effect.

6.10 Failure or delay of either party to enforce any provision of this agreement will not be construed as a waiver of such provision nor of the right to enforce such provision at any time thereafter. A waiver by either party of any provision, right, or breach under this agreement must be in writing and signed by authorized representatives of both parties, and will not be deemed to be a waiver of any other provision, right, or subsequent breach. The rights and remedies of the parties under this agreement will be cumulative and in addition to any other rights and remedies available to the parties by law or otherwise.

6.11 Any ambiguity in this agreement will be resolved to permit the parties to comply with the HIPAA Rules and any other implementing regulations and/or guidance.

6.12 If any dispute or claim arises between the parties with respect to this agreement, the parties shall make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this agreement.

6.13 Neither party has the right to assign any of its rights or obligations under this agreement without the prior written consent of the other party.

6.14 This agreement and the rights and obligations of the parties hereunder will be construed, interpreted, enforced with, and governed by the laws of the State of Kansas and the United States of America.

6.15 Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of both parties.

6.16 This agreement may be executed in one or more counterparts, each of which is deemed an original, but all of which together constitute one and the same document. Electronic signatures may be used to execute this agreement.

6.17 This agreement replaces and supersedes any prior business associate agreement between the parties.

## AUTHORIZED REPRESENTATIVES

Each party represents and warrants to the other that the person signing on its behalf is an authorized representative with the authority to enter into this agreement on its behalf.

**Authorized Representative of Business Associate Authorized Representative of Covered Entity**

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**(Signature) (Signature)**

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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