

BUSINESS ASSOCIATE ATTACHMENT

This Attachment, dated this ____ day of _____, _____ sets forth the responsibilities and obligations of _____ (“Associate”) as a business associate of _____ (“Facility”) pursuant to the agreement between Associate and Facility dated _____ (“Agreement”). Associate and Facility agree to the terms and conditions of this Attachment in order to comply with the use and handling of Protected Health Information (“PHI”) under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160.103, 164.501 et. seq., as amended from time to time (“Privacy Standards”), Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. §§ 160.103, 162.103, 164.103 et. seq., as amended from time to time (“Security Standards”), and Section 13401 of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”). Unless otherwise provided, all capitalized terms in this Agreement will have the same meaning as provided under the Privacy Standards and the Security Standards. Associate and Facility will comply with the terms of this for the duration of the Agreement and for such other continuing periods as provided in this Attachment.

1. **Uses and Disclosures of Protected Health Information.** Associate will use and disclose PHI only for those purposes necessary to perform its duties, obligations and functions under the Agreement, or as otherwise expressly permitted in this Attachment or required by other law. Associate will not use or further disclose any PHI in violation of this Section.

2. **Safeguards.** Associate will implement appropriate administrative, physical, and technical safeguards, together with policies and appropriate documentation, to prevent use or disclosure of PHI received from Facility for purposes other than those permitted by this agreement and to protect the confidentiality, integrity, and availability of electronic PHI, if any, that Associate creates, received, maintains, or transmits on behalf of Facility.

3. **Reports of Impermissible Use of Disclosure.** Associate will adhere to the “Breach Notification” requirements of “unsecured PHI” under the HITECH Act and immediately report to the Facility any use or disclosure of PHI received from Facility for purposes other than those permitted by this Agreement and will report to Facility any security incident of which it becomes aware that affects PHI created on behalf of or received from Facility.

For purposes of this section, the following definitions under the HITECH Act will apply:

“Breach” means “the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.”

“Unsecured PHI” means “PHI that is not secured through the use of a technology or methodology specified by HHAS guidance.”

The Associate will be financially responsible for all costs (including, but not limited to, the required notification and the maintenance of customer relation phone lines), civil penalties, and damages, the Facility incurs as the result of a “Breach” caused by the Associate, its employees or agents.

4. Agents and Subcontractors. If Associate provides PHI to an agent or subcontractor for a purpose authorized under the Agreement and this Attachment, Associate will first enter into a written contract that contains the contractual elements described in Exhibit 1 with the agent or subcontractor that requires the agent or subcontractor to agree to the same restrictions and conditions applicable to Associate’s use and disclosure of PHI. Associate will maintain an accounting of any such disclosures to agents or subcontractors as provided in Section 7 of this Attachment.

5. Obligations Regarding Associate Personnel. Associate will appropriately inform all of its employees, agents, representatives and members of its workforce (“Associate Personnel”), whose services may be used to satisfy Associate’s obligations under the Agreement and this Attachment of the terms of this Attachment. Associate represents and warrants that the Associate Personnel are under legal obligation to Associate, by contract or otherwise, sufficient to enable Associate to fully comply with the provisions of this Attachment.

6. Access to PHI.

a. Facility Access. Within five days of a request by Facility for access to PHI held by Associate, Associate will make requested PHI available to Facility.

b. Patient Access. If a Patient requests access to PHI directly from Associate, Associate will within five days forward such request in writing to Facility. Facility will be responsible for making all determinations regarding the grant or denial of a Patient’s request for PHI and Associate will make no such determinations. Only Facility will release PHI to the Patient pursuant to such a request.

7. Amendment of PHI. Within five business days of receiving a request from Facility to amend a Patient’s PHI, Associate will provide such information to Facility for amendment. If the Facility’s request includes specific information to be included in the PHI as an amendment, Associate will incorporate such amendment within seven days of receipt of the Facility request. Associate will forward to Facility within three days any requests by Patients to Associate to amend PHI within. Facility will be responsible for making all determinations regarding amendments to PHI and Associate will make no such determinations.

8. Accounting of Disclosures; Requests for Disclosure.

a. **Disclosure Records.** Associate will keep a record of any disclosure made to its agents, subcontractors or other third parties for any purpose other than:

- (1) Disclosures to other healthcare providers to assist in the treatment of patients;
- (2) Disclosures to others to assist the Facility in obtaining payment;
- (3) Disclosures to others to assist the Facility in conducting its healthcare operations, as defined in 45 C.F.R. § 164.501.

Associate will maintain this disclosure record for the term of the Agreement and for six years from the effective date of termination of the Agreement.

b. **Data Regarding Disclosures.** For each disclosure, Associate will record and maintain the following information:

- (1) The date of disclosure;
- (2) The name of the entity or person who received the PHI, and, the address of such entity or person, if known.
- (3) A description of the PHI disclosed; and
- (4) A brief statement of the purpose of the disclosure, including an explanation of the basis of the disclosure.

c. **Patient Request for Disclosure Records.** Within five days of receipt of a notice from Facility to Associate of a Patient's request for PHI, Associate will provide Facility with the records of disclosures requested in the notice. Associate will provide the records for six years before the date on which the accounting was requested by the Patient, as set forth in the notice. It is not necessary to record any disclosures made prior to April 14, 2003.

d. **Patient Request to Associate.** If a Patient requests an accounting of disclosures directly from Associate, Associate will forward the request to Facility within three days of Associate's receipt of the request, and will make its records of disclosures available to Facility as otherwise provided in this Section. Facility will be responsible to prepare and delivery the records of disclosure to the Patient. Associate will not provide an accounting of its disclosure directly to the Individual.

9. **Associate Use for Management and Administration.** Associate may use PHI for the necessary management and administration of Associate, or to carry out the legal responsibilities of the Associate if:

- a. The disclosure is required by law; or
- b. Associate secures written assurance as set forth in Exhibit 1 to this Attachment from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by law or for the purposes for which it was disclosed to

the recipient; and (iii) notify the Associate of any breaches in the confidentiality of the PHI.

10. **Facility Provision of Information to Associate on Restrictions.** If Facility advises Associate of any changes in, or restrictions to the permitted use or disclosure of PHI provided to business associate, Associate will restrict use or disclosure of PHI consistent with the Facility's instructions.

11. **Responsibilities upon Termination.**

a. **Return of PHI; Destruction.** Within thirty days of termination of Agreement, Associate will return to Facility all PHI received from Facility or created or received by Associate on behalf of Facility which Associate maintains in any form or format, and Associate will not maintain or keep in any form or format any portion of the PHI. Alternatively, Associate may, upon Facility's written consent, destroy all such PHI and provide written documentation of such destruction. The requirement to return or destroy such PHI will apply to all agents or subcontractors of Associate. Associate will be responsible for recovering any PHI from such agents or subcontractors. If Associate cannot obtain the PHI from any agent or subcontractor, Agent will so notify Facility and will require that such agents or subcontractors directly return PHI to Facility or otherwise destroy such PHI, subject to the terms of this Section.

b. **Alternative Measures.** If Associate believes that returning or destroying PHI at the termination of the Agreement is infeasible, it will provide written notice to Facility within five days of the effective date of termination of the Agreement. Such notice will set forth the circumstances that Associate believes makes the return or destruction of PHI infeasible and the alternative measures that Associate recommends for assuring the continued confidentiality and security of the PHI. Facility promptly will notify Associate of whether it agrees that the return or destruction of PHI is infeasible. If the Facility agrees that return or destruction of PHI is infeasible, Associate agrees to extend all protections, limitations and restrictions of this Agreement to Associate's use or disclosure of PHI retained after termination of this Agreement and to limit further uses or disclosures to those purposes that make the return or destruction of the PHI infeasible. Any such extended protections, limitations and restrictions will apply to any agents or subcontractors of Associate for whom return or destruction of PHI is determined by Facility to be infeasible. If Facility does not agree that the return or destruction of PHI from Associate or its agents or subcontractors is infeasible, Facility will provide Associate with written notice of its decision, and Associate, its agents and subcontractors will proceed with the return or destruction of the PHI pursuant to the terms of this Section within fifteen days of the date of Facility's notice.

12. **Term and Termination.**

a. **Term.** This Attachment will commence on the date first set forth above and will terminate concurrently with the expiration or termination of the Agreement.

b. **Termination.** Facility immediately may terminate the Agreement upon written notice to Associate if Facility determines in its discretion that the Associate has breached a

material term of this Attachment. Alternatively, Facility may elect to provide Associate with thirty days' advance written notice of Associate's breach of any term or condition of this Attachment, and afford Associate the opportunity to cure the breach to the satisfaction of Facility within twenty days of such notice. If Associate fails to timely cure the breach, as determined by Facility, the Agreement will terminate as provided in Facility's notice.

13. Associate Books and Records.

a. **Facility Access.** Associate will, within five days' of Facility's written request, make available during normal business hours at Associate's offices, all records, books, agreements, policies and procedures relating to the use or disclosure of PHI for the purpose of allowing Facility to determine Associate's compliance with the Agreement and this Attachment.

b. **Government Access.** Associate will make its internal practices, books and records on the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining compliance with the Privacy Standards and any other provisions of HIPAA and HIPAA regulations. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Associate or Facility as a result of this Section.

14. **Notices.** Any notices required under this Attachment will be sent to the parties at the following address by first class mail, fax or hand delivery:

Facility:

Fax: _____

Attn: _____

Associate:

Fax: _____

Attn: _____

FACILITY

By: _____

Title: _____

ASSOCIATE

By: _____

Title: _____

EXHIBIT 1 TO BUSINESS ASSOCIATE ATTACHMENT

**BUSINESS ASSOCIATE ASSURANCE FOR RELEASE
OF INFORMATION TO THIRD PARTIES**

1. _____ ("Associate") is a business associate of _____ ("Facility") pursuant to the agreement between Associate and Facility dated _____ ("Agreement"). Pursuant to that Agreement, Associate is required to comply with the requirements for the use and handling of Protected Health Information ("PHI") from Facility as set forth in the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. 164.501 et. seq. as amended from time to time ("Privacy Standards") and Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. 160.103, 162.103, 164.103 et. seq., as amended from time to time ("Security Standards").

2. Associate is permitted to disclose PHI to _____ ("Recipient") for the necessary management and administration of Associate and to carry out the legal responsibilities of the Associate, provided that Recipient provides Associate with the following assurances for Recipient's use and disclosure of PHI.

3. Associate seeks to disclose PHI to Recipient for the following management, administration or legal responsibilities of Associate: _____

4. The disclosure of PHI to Recipient is conditioned upon Recipient's assurance that, and Recipient agrees that it will:

- a. Hold the PHI confidentially and make no re-disclosure to any third party without Associate's express advance written consent;
- b. Use or disclose the PHI only as required by law or for the purposes set forth above;
- c. Implement appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI for purposes other than those permitted by this agreement and to protect the confidentiality, integrity, and availability of electronic PHI, if any, that Recipient creates, received, maintains, or transmits on behalf of Associate and/or Facility.
- d. Notify Associate in writing of any breaches in the confidentiality of the PHI within three days of discovery of any such breach.