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YOU ARE STRONGLY ENCOURAGED TO CONSULT WITH A QUALIFIED LEGAL PROFESSIONAL TO ENSURE THAT ANY BUSINESS ASSOCIATE AGREEMENT EXECUTED BY YOU COMPLIES WITH ALL LAWS AND ADEQUATELY ADDRESSES YOUR CIRCUMSTANCES.

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BUSINESS ASSOCIATE SUBCONTRACTOR AGREEMENT

This Business Associate Subcontractor Agreement ("Business Associate Subcontractor Agreement") is entered into by and between _____ ("Business Associate") and _____ ("Subcontractor") and is effective as of _____ ("Effective Date").

WHEREAS, Business Associate and Subcontractor are parties to a services agreement or other formal business relationship, the terms of which are incorporated herein by reference ("Underlying Agreement") that may involve the receipt, creation, transmission, or maintenance of protected health information of Business Associate's customers ("PHI"); and

WHEREAS, Business Associate and Subcontractor are subject to the Privacy and Security Regulations promulgated by the United States Department of Health and Human Services ("HHS") at 45 CFR Parts 160, 162 and 164 that were issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended, and the rules and regulations promulgated thereunder ("HIPAA") and pursuant to the provisions of the Health Information Technology for Economic and Clinical Health Act of 2009, as amended, and the rules and regulations promulgated thereunder ("HITECH" and, together with HIPAA and the HIPAA Omnibus Final Rule, the "Regulations").

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein, the consideration set forth in the Underlying Agreement, and other good and valuable consideration, receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms shall have the same meaning as set forth in the Regulations.

2. Restrictions on Use of PHI. Subcontractor may use PHI only to perform the permitted and required uses and disclosures as provided by the Underlying Agreement and this Business Associate Agreement (collectively, the "Agreements") or as required by law. Subcontractor shall not use or disclose PHI received from Business Associate in any manner that would constitute a violation of the Regulations if Business Associate made the same use or disclosure, except that Subcontractor: (a) may use or disclose such PHI to comply with Subcontractor's proper management and administration, and (b) may use or disclose such PHI for Subcontractor's legal responsibilities. Subcontractor may disclose PHI for the purposes described in this Section 2 only if Subcontractor obtains reasonable written assurances from the person or entity to whom the PHI 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 or entity, and such person or entity notifies Subcontractor of any instances of which it is aware in which the confidentiality of the PHI has been breached, or such disclosure is required by law. Without limiting the foregoing, Subcontractor may not de-identify or aggregate PHI for any reason, except as otherwise provided in the Agreements and then solely on behalf of Business Associate. Subcontractor agrees to make its uses, disclosures and requests for protected health information consistent with Business Associate's minimum necessary policies and procedures.

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3. Application of the Regulations to Subcontractor. Subcontractor understands and acknowledges that all applicable provisions of the Regulations apply directly to Subcontractor and to each of its subcontractors and agents (and their subcontractors and agents) who receive or have access to the PHI and that Subcontractor and each such subcontractor or agent is subject to compliance with all applicable provisions of the Regulations, including without limitation, all applicable security and privacy laws, rules and regulations contained in or promulgated under the Regulations. Without limiting the foregoing, Subcontractor shall ensure that any agent or subcontractor of Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Subcontractor ("Subcontractor") agrees in writing to the same restrictions, conditions, and requirements that apply to Subcontractor with respect to such information ("Sub-BA Agreement"); each Sub-BA Agreement shall require the applicable Subcontractor to enter into a similar written agreement with each of its subcontractors and agents who receive, create, transmit or maintain PHI or otherwise have access to the PHI. If Business Associate is itself a business associate (or subcontractor of a business associate) with respect to the PHI, Subcontractor agrees that it shall comply with all provisions of the business associate agreement between Business Associate and the applicable Business Associate or business associate with respect to the PHI. Subcontractor agrees to implement a HIPAA compliance program including HIPAA-specific policies and procedures, workforce training, and documentation of HIPAA-compliant services. Subcontractor agrees to allow Business Associate to review or audit its compliance program and Sub-BA agreements (using its own staff or a consultant) and to determine in its own opinion if Subcontractor's HIPAA compliance program will sustain a HIPAA audit or data breach investigation.

4. Safeguards for Protection and Security of PHI; Report of Unauthorized Use or Disclosure. Subcontractor agrees that it will implement reasonable and appropriate safeguards to prevent any use or disclosure of PHI in violation of the Agreements or the Regulations. Subcontractor agrees that it will report to Business Associate any unauthorized use or disclosure of PHI promptly (but in event more than three (3) business days) after Subcontractor becomes aware of any such violation. Subcontractor's notification to Business Associate shall be in the content and form required by HITECH and any applicable state laws. In addition and without limiting the foregoing, Subcontractor shall: (a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Protected Health Information that Subcontractor creates, receives, maintains, or transmits on behalf of Business Associate as required by the Regulations; (b) ensure that any agent, including a Subcontractor, to whom Subcontractor provides PHI agrees in writing to implement reasonable and appropriate safeguards to protect such information; (c) promptly report any security incident that Subcontractor becomes aware of to Business Associate in accordance with the Regulations but in no event more than three (3) days after Subcontractor becomes aware of such security incident.

5. Cooperation by Subcontractor. Subcontractor agrees to cooperate with Business Associate in promptly: (a) making PHI available for access to the individual to whom it relates; (b) making appropriate amendments to PHI as directed by an individual to whom it relates; (c) if applicable, make available PHI in a designated record set to the individual's designee; and (d) providing an accounting of disclosures of PHI received under the Agreements as requested by an individual to whom it relates, except to the extent the Regulations provide otherwise. Such cooperation shall include the notification to Business Associate by Subcontractor within ten (10) business days after receiving any such request for access, amendment or accounting.

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6. HHS. Subcontractor agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from or created or received by Subcontractor on behalf of Business Associate available to the Secretary of HHS for purposes of determining Business Associate's compliance with the Regulations.

7. Limitations on Use or Disclosure. Business Associate agrees to notify Subcontractor promptly after becoming aware of any arrangements permitted or required of Business Associate by the Regulations that may impact in any manner the use or disclosure of PHI by Subcontractor under the Agreements, including: (a) restrictions on use or disclosure of PHI agreed to by Business Associate upon request of an individual; and (b) changes in, or withdrawal of, an individual's consent or authorization with respect to the disclosure of his/her PHI.

8. Termination. Subcontractor agrees that any material violation of this Agreement or any material violation of that portion of the Underlying Agreement relating specifically to the permitted and required uses and disclosures of PHI by Subcontractor shall constitute a material default under the Agreements. Business Associate shall be entitled to immediately terminate this Agreement and the Underlying Agreement upon written notice to Subcontractor. Upon termination of the Agreements, Subcontractor shall promptly return or destroy all PHI or, if the parties mutually determine that such return or destruction is not feasible, Subcontractor agrees that the provisions of this Agreement shall continue to apply to such PHI, and further uses and disclosures of such PHI shall be restricted to only those purposes which make the return or destruction of the information infeasible.

9. HITECH. Subcontractor acknowledges and understands that HITECH (including the rules and regulations promulgated thereunder) imposes direct responsibility on Subcontractor for its conduct as a business associate and that Subcontractor is subject to direct liability for both civil and criminal penalties for its violations of the Regulations and may be subject to direct liability for both civil and criminal penalties for the violations of its Subcontractors. Any limitation of liability in the Underlying Agreement shall not apply to damages hereunder. Each party agrees to indemnify and hold harmless the other party and the other party's directors, officers, agents and employees, from and against any and all penalties, claims, actions, liability, loss, damages or expense (including court costs and reasonable attorneys' fees) arising out of the indemnifying party's act or failure to act resulting in damages relating to the unauthorized access to, or the disclosure, loss, destruction or use of PHI, or other violation of this Agreement.

10. Miscellaneous. The term of this Agreement shall co-terminus with the term of Underlying Agreement. All title to the PHI shall remain the sole property of Business Associate. Any notice or other communication by either party to the other shall be in writing and shall be given in accordance with the notice provisions of the Underlying Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein or therein confer, upon any person other than Business Associate and Subcontractor and their respective successors or assigns in interest, any rights, remedies, obligations, or liabilities whatsoever. The Agreements set forth the entire, final and exclusive agreement between the parties as to the subject matter hereof and thereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. Except as provided in the following sentence, any amendment or modification to this Agreement must be in writing and signed by both parties. Upon the occurrence of

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changes or amendments to the Regulations or other law that affect the legality of the Agreements or any provision in the Agreements, Business Associate and Subcontractor agree to modify the Agreements to the extent necessary to permit Business Associate to comply with any changes in the Regulations. Any ambiguity in this Business Associate Subcontractor Agreement shall be interpreted to permit compliance with the Regulations.

IN WITNESS WHEREOF the parties have caused this Business Associate Subcontractor Agreement to be executed in by their duly authorized representatives.

Signature

Name

Title

Signature

Name

Title