

HIPAA BUSINESS ASSOCIATE AGREEMENT

PatientCalls ("Business Associate") and _____, a _____ ("Covered Entity") entered into a certain contract ("Contract") for the provision of administrative services related to medical services.

WHEREAS, because the provisions of the 1996 Health Insurance Portability and Accountability Act, thereunder and set forth at 42 U.S.C.S. Section 1320 ("HIPAA"), and the HIPAA privacy and security regulations promulgated thereunder, as well as the subsequent provisions of the "American Recovery and Reinvestment Act of 2009" (also known as the "Health Information Technology for Economic and Clinical Health" or "HITECH" Act) and the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 (collectively, the "HIPAA Rules") require "covered entities" and "business associates" to take certain steps to protect patient privacy and patient information (hereafter "PHI"); and

BECAUSE one of those steps mandated by the HIPAA Rules is to require parties who exchange or share PHI to enter into written agreements regarding the procedures to be used to protect that PHI, and because it is anticipated that the parties will exchange PHI;

THEREFORE, the parties, intending to be legally bound, hereby enter into this Business Associate Agreement ("Agreement") and agree as follows:

1. Definitions.

a. "Designated Record Set" shall mean a group of records maintained by or for Covered Entity that is (i) medical records and billing records about individuals maintained by or for Covered Entity, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, (iii) use, in whole or in part, by or for Covered Entity to make decisions about individuals.

b. "Electronic Media" shall mean the mode of electronic transmissions. It includes the internet, extranet (using internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disc, or compact disc media.

c. "Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual, and: (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (ii) relates to past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and (x) identifies the individual, or (y) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

d. "PHI" or "Protected Health Information" shall mean Individually Identifiable Health Information that is (i) transmitted by Electronic Media, (ii) maintained in any medium constituting Electronic Media, or (iii) transmitted or maintained in any other form or medium.

2. **Effect.** The terms and provisions of this Agreement shall supersede any other conflicting or inconsistent terms and provisions in the Contract which this Agreement supplements, including all exhibits or other attachments thereto and all documents incorporated therein by reference. The parties agree that the effective date of this Agreement shall be the earlier of: (i) the date on which this Agreement is executed and (ii) thirty (30) days after Covered Entity's receipt of this Agreement from Business Associate, and the obligations herein shall continue in effect for so long as Business Associate uses, discloses, creates, or otherwise possesses any PHI created or received on behalf of Covered Entity, and/or until all such PHI is destroyed or returned to Covered Entity.

3. Business Associate Obligations. Business Associate hereby agrees to:

a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law;

b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;

c. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;

d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;

e. Make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

f. Make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

g. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

h. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and

i. Make its internal practices, books, and records available to the Secretary of the U.S. Department of Health and Human Services ("Secretary") for purposes of determining compliance with the HIPAA Rules.

4. **Permitted Disclosures.** Business Associate may use or disclose PHI as follows:

a. As necessary to perform the services set forth in the Contract;

b. As required by law;

c. Consistent with Covered Entity's minimum privacy and security policies and procedures;

d. If necessary for the proper management and administration of Business Associate's business or to carry out the legal responsibilities of Business Associate;

5. **Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as provided in Section 4(d) of this Agreement.

6. **Reporting of Improper Disclosures of PHI.** Business Associate acknowledges that it is required by law to comply with the HIPAA security rule (45 C.F.R. 164.302 through 164.318) and the use and disclosure provisions of the HIPAA privacy rule (45 C.F.R. 162.502, 162.504). Business Associate shall immediately, but in no event later than five (5) days after becoming aware of any use or disclosure of PHI in violation of this Agreement – or in violation of the HIPAA Rules – whether by Business Associate, its officers, directors, employees, contractors or agents, (or by a third party to which Business Associate disclosed PHI) report any such disclosure or privacy or security breach to Covered Entity. Business Associate agrees to (a) fully cooperate with Covered Entity in the investigation of any such improper disclosure or privacy or security breach; and (b) fully mitigate any harmful effect resulting from any such improper disclosure or privacy or security breach.

Business Associate shall provide written notice to Covered Entity, in the timeframe referenced above, of each of the following: (i) the date of the breach; (ii) the date of the discovery of the breach; (iii) a description of the types of unsecured PHI that were involved; (iv) identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and (v) any other details necessary to complete an assessment of the risk of harm to any individual(s). Covered Entity will be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as any required disclosure to the Secretary. Business Associate agrees to establish procedures to investigate the breach, mitigate losses and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity.

7. **Security Measures.** In addition to any other requirements stated in this Agreement, Business Associate hereby agrees to take each of the following steps regarding PHI maintained or transmitted in any electronic form or format: (a) it shall fully comply with the HIPAA Rules; (b) it shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Among those safeguards shall be the encryption of any electronic mail or other electronic exchange of PHI ("e-mail") exchanged between the parties, as Business Associate understands and agrees that such e-mail encryption is a required element for it to comply with the HIPAA Rules; (c) it shall ensure that any subcontractor to whom it provides such electronic PHI that was created, received, maintained or transmitted on behalf of Covered Entity

agrees to implement reasonable and appropriate safeguards to protect it; and (d) it shall report to Covered Entity any security incident of which it becomes aware.

8. **Agreements by Third Parties.** Business Associate shall obtain and maintain an agreement with each subcontractor that has or will have access to PHI, received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which agreement such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate pursuant to this Agreement with respect to such PHI.

9. **Access to Information.** Within five (5) days after a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

10. **Availability of PHI for Amendment.** Within ten (10) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526.

11. **Accounting of Disclosures.** Within ten (10) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

12. **Notice of Request for Data.** Business Associate agrees to notify Covered Entity within five (5) business days of Business Associate's receipt of any request or subpoena for PHI. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to cooperate fully with Covered Entity in such challenge.

13. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Rules.

14. **Indemnification.** Business Associate and Covered Entity hereby agree to indemnify and hold the other harmless from and against any and all liability and costs, including attorneys' fees, created by a breach of this Agreement by the other party or its subcontractors, without regard to any limitation or exclusion of damages provision otherwise set forth in the Contract.

15. **Termination of Agreement.**

a. Covered Entity may terminate the Contract upon five (5) days' prior written notice to Business Associate in the event that the Business Associate breaches any provision contained in this Agreement and such breach is not cured within such five (5) day period.

b. Upon termination of the Contract, Business Associate shall: (i) retain only that PHI which is required for Business Associate to maintain the proper management and administration of its business or to carry out its legal responsibilities; (ii) return to Covered Entity, or destroy, any remaining PHI; (iii) only use or disclose such PHI for such purpose or purposes which prevented the return or destruction of such PHI; (iv) continue to use the appropriate safeguards and comply with Section C of 45 CFR 164 to prevent use or disclosure of PHI; and (v) return to Covered Entity or destroy any remaining PHI when Business Associate no longer needs such PHI for its proper management or to carry out its legal responsibilities.

c. All obligations under this Agreement shall survive the expiration or earlier termination of this Agreement.

16. **Covered Entity's Right to Cure.** Covered Entity shall have the right to cure any breach of Business Associate's obligations under this Agreement. Covered Entity shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by Covered Entity to cure any such breach.

17. **Miscellaneous.**

a. Any reference in this Agreement to a section in the HIPAA Rules means the section as then in effect or as amended from time to time.

b. The parties hereto agree to take such action as is necessary to amend this Agreement from time to time as necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

c. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the parties have hereby executed this Agreement on the date written below.

_____ [Covered Entity]

By _____
Its _____, duly authorized
Date _____

_____ [Business Associate]

By _____
Its _____, duly authorized
Date _____