

BUSINESS ASSOCIATE AGREEMENT

AGREEMENT made as of the ___ day of _____, _____ by and
between _____, a Pharmacy having a principal place of
business at _____ (“the Pharmacy”); and
_____ having a principal place of
business at _____ (“the Business Associate”).

In consideration of the mutual promises and undertakings of the Parties set out in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. The Business Associate’s Services. The Business Associate agrees to perform the services described below in this paragraph (“the Services”) for and on behalf of the Pharmacy in accordance with the terms and conditions of this Agreement, and on such terms and conditions as the Parties have or may hereafter agree, provided however, that such agreement as to the performance of the Services shall at all times be fully consistent with the terms and conditions of this Agreement and with the statutes, rules, and regulations that are incorporated in this Agreement by reference.
2. The Services. The Services to be provided by the Business Associate are described in the attached Exhibit A.
3. Incorporation By Reference.
 - a) This Agreement is intended to reflect the intention of the Parties that this Agreement shall be performed in compliance with the applicable statutes, rules and regulations, including as illustrations and not as limitations: the HIPAA Privacy Rule, the HIPAA Security Rule, the HITECH Act, the Breach Notification Rule, the Final Rule, and state laws and regulations not preempted by HIPAA that are addressed to the privacy and security of Protected Health Information (“PHI”). (When named in this Agreement, the U.S. Secretary of Health and Human Services will be referred to as “the Secretary”).
 - b) The provisions of this Agreement (including any Service Agreement attached to Exhibit A) are to be interpreted at all times so as to be consistent with the statutes, rules and regulations referred to in subparagraph (a) above. In the event of any conflict among the provisions of this Agreement and the statutes, rules and regulations referred to in the subparagraph (a) above, the provisions of such statutes, rules and regulations as currently written or as hereafter amended or otherwise modified by the Secretary during the Term of this Agreement (including any periods of survival) shall prevail.
4. Use and Disclosure of PHI.
 - a) The Business Associate acknowledges that in the performance of the Services it will have access to the PHI of patients served by the Pharmacy. Accordingly, the Business Associate warrants and represents to the Pharmacy it shall not use or further disclose any part or all of the PHI received from the Pharmacy other than for the purpose of providing

the Services to or on behalf of the Pharmacy nor in any manner that may constitute a violation of any statute, rule or regulation incorporated in this Agreement by reference.

- b) The Business Associate acknowledges that it will be and remain in compliance with HIPAA Security Rule, adopting and maintaining such commercially reasonable administrative, physical and technical safeguards and such policies, procedures and documentation as the Rule requires.
- c) The Business Associate further acknowledges that its liability for the imposition of civil and criminal penalties is the same as the liability of the Pharmacy in all circumstances involving the use and disclosure of PHI.
- d) In the event that the Business Associate becomes aware of a breach of unsecured PHI (as defined in the Breach Notification Rule) in its possession or control or in the possession or control of any of its subcontractors or agents, if any, the Business Associate will comply with actions required of it in the Act and in the Breach Notification Rule, including as illustration and not in limitation, notifying the Pharmacy in writing of the breach not later than 5 calendar days after its discovery of the breach, promptly supplementing such notice with further information as soon as revealed, identifying each individual whose PHI is believed to have been involved, subject in each instance to a law enforcement delay.
- e) The Business Associate agrees that it will require its agents, contractors and subcontractors, if any, to adhere to the same restrictions and conditions that apply to the Business Associate under this Agreement, including to the extent applicable, the statutes, rules and regulations incorporated in this Agreement by reference. Such requirement shall be in the form of a written agreement which incorporates the terms and conditions of this Agreement.
- f) The Business Associate agrees to make available to the Secretary upon request the Business Associate's internal practices, books and records relating to the use and disclosure of PHI for the purposes of determining the Business Associate's compliance with the statutes, rule and regulations incorporated in this Agreement by reference.
- g) The Business Associate agrees to make available, upon request, to the Pharmacy or to an individual, the information necessary for an accounting of disclosures of the PHI concerning that individual as provided in paragraph 8.
- h) The Business Associate agrees to promptly mitigate, to the extent practicable, any and all harmful effects known to the Business Associate that result from any use or disclosure of PHI that is in violation of this Agreement or the statutes, rules and regulations incorporated in this Agreement by reference whether such violation is attributable to the Business Associate itself or to any individual or entity for whose conduct the Business Associate may be responsible. The Business Associate further agrees to notify the Pharmacy of the occurrence of such violation in accordance with subparagraph (d) and the steps being taken in mitigation

5. Indemnification.

- a) The Business Associate agrees to indemnify and save the Pharmacy harmless from any demand, claim, liability or proceeding of any nature whatsoever, including without limitation reasonable counsel fees and expenses, that may be asserted against the Pharmacy by any third party which arises out of or is related to any violation of this

Agreement or of any of the statutes, rules and regulations incorporated in this Agreement by reference by the Business Associate or to other improper or prohibited use or disclosure by the Business Associate of PHI received by it from the Pharmacy or created on behalf of the Pharmacy by the Business Associate, or any such violation by any individual or entity for whose conduct the Business Associate may be responsible.

- b) The Pharmacy agrees to indemnify and save the Business Associate harmless from any demand, claim, liability or proceeding of any nature whatsoever, including without limitation reasonable counsel fees and expenses, that may be asserted against the Business Associate by any third party which arises out of or is related to any violation of this Agreement or of any of the statutes, rules and regulations incorporated in this Agreement by reference by the Pharmacy or to other improper or prohibited use or disclosure by the Pharmacy of PHI, or any such violation by any individual or entity for whose conduct the Pharmacy may be responsible.
- c) If any event contemplated by subparagraphs (a) or (b) occurs, the indemnified Party will have the right to assume the defense of the matter upon notice to the indemnifying Party, and in no event may any settlement or other resolution of the matter be accomplished without the prior written consent of the indemnified Party, neither shall the indemnified Party's assumption of defense or consent to a settlement or other resolution of the matter relieve the indemnifying Party of its obligations under this Agreement.
- d) In the event that any claim is asserted by the Pharmacy against the Business Associate, or by the Business Associate against the Pharmacy, for any alleged violation of any provision of this Agreement or any alleged violation of applicable law, neither Party shall be liable for any type of consequential or punitive damages.

6. Term. This Agreement shall be in effect from the date above until terminated as provided in the following paragraph.

7. Termination.

- a) Either Party may terminate this Agreement on not less than 90 calendar days prior written notice to the other Party. Such notice shall specify the intended date of termination.
- b) Notwithstanding the foregoing subparagraph (a), the Business Associate agrees that this Agreement may be terminated by the Pharmacy if the Pharmacy reasonably determines that the Business Associate has violated a material term of this Agreement or the provisions of any statute, rule or regulation incorporated in this Agreement by reference. Termination shall be effective on the date specified by the Pharmacy in its notice of termination. The notice of termination shall describe in reasonable detail the violation(s) involved. In such notice, the Pharmacy may elect to give the Business Associate a period of time to correct the violation. If, under the circumstances neither the curing of the violation nor the termination of this Agreement is feasible, the Pharmacy shall report the violation to the Secretary.
- c) Upon the termination of this Agreement for any reason, the Business Associate will return to the Pharmacy all PHI received from the Pharmacy or created on behalf of the Pharmacy that the Business Associate still maintains in any form, retaining no copies. If it is not feasible for the Business Associate to return the PHI, it shall use its best efforts to fully destroy the PHI, retaining no copies, and the Business Associate, at the request of the Pharmacy, will certify under oath to the Pharmacy that it has carried out such

destruction, describing in reasonable detail the manner in which such destruction was carried out.

- d) Notwithstanding subparagraph (c), in the event of the termination of this Agreement, the Business Associate may retain only such PHI as may be needed for the limited purpose of receiving payment(s) then due from the Pharmacy, and also for the limited purpose of complying with applicable law in addition to the statutes, rules and regulations incorporated in this Agreement by reference as to the retention of PHI. At the conclusion of such payment process and at the expiration of such retention period, the Business Associate will promptly return or destroy the remaining PHI in the manner provided in subparagraph (c).

- e) If during the Term of this Agreement, the Business Associate becomes aware that the Pharmacy is engaged in a course of conduct that may constitute a material breach of this Agreement or any provision of any statute, rule or regulation incorporated in this Agreement by reference, the Business Associate will comply with actions required of it in the Act and in the HIPAA Privacy Rule.

8. Minimum Necessary Limitation

In making disclosures of PHI, the Business Associate will at all times exercise its best professional judgment as to the Minimum Necessary PHI needed to accomplish the purposes of such disclosure. At such time as the Secretary of HHS issues guidance on what constitutes Minimum Necessary, the Business Associate will comply with the Secretary's guidance without the need for a formal amendment to this Agreement. The Minimum Necessary limitation shall not apply to disclosures of PHI for the purposes treatment provided to any individual.

9. Accounting for Disclosures for PHI

In response to a request from an individual or the individual's Personal Representative, the Business Associate will provide an accounting of all disclosures made by the Business Associate of the individual's PHI during the 3 years preceding such request in such manner as regulations promulgated by the Secretary shall hereafter provide. Until such regulations take effect the Business Associate will continue to make an individual's PHI available to the individual or his or her Personal Representative as provided the statutes, rules and regulations incorporated in this Agreement by reference.

10. Prohibition on the Sale of PHI

The Business Associate will not be entitled to receive payment in exchange for the disclosure of any individual's PHI unless the Pharmacy has obtained a HIPAA compliant authorization from the individual that expressly states whether the PHI can be further exchanged for payment by the entity that has received the individual's PHI. Nevertheless, this paragraph shall not apply to exchanges for the following purposes: (a) public health activities, (b) research where the price charged reflects the costs of preparation and transmittal of the data for that purpose, (c) treatment (subject to regulations that the Secretary may hereafter issue), (d) the health care operation that involves the sale, transfer or merger of the Pharmacy with another entity that is, or will be, a covered entity, (e) payment to the Business Associate pursuant to this Agreement, (f) payment from individual in exchange for providing the individual with a copy of his or her PHI. At such time as the Secretary issues final regulations concerning such payments for PHI exchanges the Business Associate will comply with such regulations without the need for a formal amendment to this Agreement. Until such time, the provisions of the HIPAA Privacy Rule are in effect as currently written.

11. Marketing

If the Business Associate, on behalf of the Pharmacy, is paid, directly or indirectly (excluding any payment for treatment) for issuing a communication that urges individuals to purchase or to use a particular product or service, such communication will not be considered a health care operation unless (a) it describes only a pharmaceutical product currently prescribed for an individual, (b) the payment is reasonable in amount (as hereafter defined by the Secretary), (c) the Pharmacy has received a HIPAA valid authorization, (d) the communication is consistent with this Agreement, and (e) if the communication is written and issued for purposes of fund raising, it must clearly and conspicuously provide an opportunity for any recipient to elect not to receive any further fundraising communications. At such time as the Secretary issues final regulations concerning such communications, the Business Associate will comply with such regulations without the need for a formal amendment to this Agreement.

12. No Third Party Benefit

This Agreement is not intended to confer upon any individual or entity other than the Parties and their successors and assigns any rights, remedies, obligations or liabilities except as referred to in subparagraph 3(h) above, in paragraph 8 above, and as to the Secretary. The rights remedies and obligations of individuals and entities concerning the subject matter of this Agreement are otherwise contained in the statutes, rules and regulations incorporated in this Agreement by reference.

13. Independent Contractors

Nothing in this Agreement shall be construed to create any form of employment, partnership, joint venture, agency or other similar type of relationship between the Parties. To the contrary, the Parties acknowledge that they are independent entities; and accordingly, in performing the Services the BA is acting strictly as an independent contractor.

14 Miscellaneous.

- a) Amendment. This Agreement may be amended only by a writing signed by both Parties. The failure or delay by either Party to enforce any provision of this Agreement will not constitute a waiver of that provision or an amendment of this Agreement. Notwithstanding the foregoing, if hereafter the statutes, rules and regulations incorporated herein by reference are amended or otherwise modified by any publication by the Secretary in a manner that affects the provisions of this Agreement, the Parties agree that such amendment(s) or publication(s) shall be automatically incorporated into this Agreement by reference.
- b) Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State in which the pharmacy has its principal place of business, and venue shall be in the U.S. District Court the State Trial Court having jurisdiction over the location in which the Pharmacy has its principal place of business.
- c) Notice. All notices given by the Parties to one another in connection with this Agreement shall be in writing and shall be delivered in hand or by certified mail, return receipt requested, all charges prepaid, or delivered by a recognized courier system that provides a proof of delivery. Such notices shall be addressed to the Parties at the addresses given or at such other addresses as the Parties may hereafter give to one another in the manner provided in this paragraph.

- d) Confidentiality. To the extent that either of the Parties may obtain information that is described as confidential or proprietary to the other, exclusive of the disclosure of PHI for the purposes of the Services, each of the Parties agrees that it will hold such information as strictly confidential, will not disclose such information to any third party nor use such information for its own purposes without the prior written consent of the other Party, which consent may be withheld. The obligations of this paragraph will survive the termination of this Agreement for a period of 36 calendar months.

- e) Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements and understanding between the parties whether written or oral.

In Witness Whereof, the Parties have caused this Agreement to be signed by their duly authorized officers or by their other duly authorized representatives as of the date first above written.

The Pharmacy:

The Business Associate:

Print Pharmacy Name

Print Business Associate Name

By: _____
Name Title

By: _____
Name Title

EXHIBIT A

[PLEASE USE THIS SPACE TO PRINT OR TYPE A DESCRIPTION OF THE SERVICES TO BE PROVIDED BY THE TO OR FOR THE PHARMACY. IF A SERVICE AGREEMENT OR A DESCRIPTION OF SERVICES HAS BEEN PROVIDED BY THE BA, IT MAY BE ATTACHED TO THIS EXHIBIT.]