

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is made as of this ___ day of _____, 2008 by and between [program site] (hereinafter referred to as "Client"), and the City of Minneapolis, Department of Health and Family Support (hereinafter referred to as "Business Associate"). This Agreement is effective as of June 1, 2008.

RECITALS

WHEREAS, Client is a Covered Entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations there under (“HIPAA Regulations”) and wishes to disclose certain information to Business Associate, or, if applicable, to allow Business Associate to create or receive information on behalf of Client pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”) as defined under HIPAA and the HIPAA Regulations; and

WHEREAS, Client and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this Agreement in compliance with HIPAA and the HIPAA Regulations, and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS OF AGREEMENT

1. Obligations of Business Associate

- a. **Permitted Uses and Disclosures.** Business Associate may use and/or disclose PHI received by Business Associate from the Client, or, if applicable, created or received by Business Associate on behalf of the Client to perform functions, activities, or services for, or on behalf of, the Client in accordance with the specifications set forth in this Agreement; provided that such use or disclosure would not violate HIPAA and the HIPAA Regulations if done by the Client. Notwithstanding any other provision herein to the contrary, Business Associate agrees to use or disclose only the “Minimum Necessary” amount of information, as such term is defined in the HIPAA Regulations, required to conduct the authorized activities herein.
- b. **Uses and Disclosures Restricted.** Business Associate shall not use or further disclose the Client's PHI other than as permitted by this Agreement or as required by law.
- c. **Safeguards.** Business Associate shall use appropriate safeguards to maintain the confidentiality of PHI and to prevent the use or disclosure of the client's PHI other than as expressly provided for by this Agreement. Business Associate hereby agrees to maintain the security and privacy of all Client's PHI consistent with federal laws and regulations, including HIPAA (1996).

- d. **Reporting of Disclosures.** Business Associate shall immediately report to Client in writing any use or disclosure of the Client's PHI other than as provided for by this Agreement, of which Business Associate becomes aware.
- e. **Business Associate's Workforce.** Business Associate shall not disclose PHI to any member of its workforce unless Business Associate has advised such person of Business Associate's privacy and security obligations under this agreement, including the consequences for violation of such obligations. Business Associate shall take such appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this or other applicable law.
- f. **Business Associate's Agents.** Business Associate shall not disclose PHI created or received by Business Associate on behalf of client to a person, including any agent or subcontractor of Business Associate until such person agrees in writing to be bound by promises of this agreement and applicable state and federal laws.
- g. **Availability of Information to the Client.** Business Associate shall make available to the Client such information as the Client may require to fulfill the Client's obligations to provide access to, provide a copy of, and account for disclosures to individuals with respect to PHI pursuant to HIPAA and the HIPAA Regulations or, if requested by the Client, the Business Associate shall make such information available to a requestor of such information and shall confirm to the Client in writing that the request has been fulfilled.
- h. **Amendment of PHI.** Business Associate shall make the Client's PHI available to the Client, upon the Client's request, to fulfill the Client's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, and Business Associate shall, as directed by the Client, incorporate any amendments to PHI provided to Business Associate by the Client into copies of such PHI maintained by Business Associate.
- i. **Internal Practices.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received or created by Business Associate from or on behalf of the Client, available to the Secretary of the United States Department of Health and Human Services, or his or her designee for purposes of determining the Client's compliance with HIPAA and the HIPAA Regulations.
- j. **Accountings.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as required for the Client to promptly respond to a request by an individual for an accounting of disclosures of such individual's PHI by Business Associate in compliance with HIPAA and the HIPAA Regulations. Business Associate agrees to permit the Client to make a timely and prompt response to a request by an individual for such accounting as required by HIPAA and the HIPAA Regulations.
- k. **Notification of Breach.** During the term of this Agreement, Business Associate shall notify the Client within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of this Agreement or any applicable federal or state laws or regulations.

2. **Specific Use and Disclosure Provisions.** Except as otherwise limited in this Agreement, Business Associate may: (a) use PHI to perform certain functions for or on behalf of Client as requested by Client from time to time, subject to the requirements of HIPAA and the HIPAA Regulations and the terms of this Agreement; (b) use PHI to carry out the legal responsibilities of the Business Associate; (c) disclose PHI, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and (d) use PHI to provide Data Aggregation services to the Client as permitted by 42 CFR 164.504(3)(2)(i)(B).
3. **Client Obligations.** As required by HIPAA and the HIPAA Regulations, Client shall: (a) provide Business Associate with the notice of privacy practices that Client produces in accordance with 45 CFR 164.520, as well as any changes to such notice; (b) provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures; and (c) notify Business Associate of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR 164.522.
4. **Termination.** A breach by Business Associate of any provision of this Agreement, as determined by the Client, shall constitute a material breach of the Agreement and shall provide grounds for termination of this Agreement by the Client and the services provided by Business Associate; provided Business Associate is unable to cure such breach within ten (10) days following written notice of such breach by Client. Notwithstanding the foregoing, the Client may terminate this Agreement, without penalty, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations; or (ii) a finding or stipulation that Business Associate violated any standard or requirement of HIPAA, the HIPAA Regulations or any other applicable laws relating to the security or privacy of PHI, or which is entered against Business Associate in any administrative or civil proceeding in which Business Associate has been joined. Business Associate agrees to cooperate with the Client as necessary to mitigate the extent of any unauthorized disclosures of PHI or any damages or potential damages and liability under HIPAA or the HIPAA Regulations caused by any violation of this Agreement or other unauthorized use of PHI.
5. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall return or destroy all PHI received by Business Associate from the Client, or, if applicable, created or received by Business Associate on behalf of the Client, that Business Associate still maintains in any form, and shall retain no copies of such PHI. If the parties mutually agree that return or destruction is not feasible, this Agreement shall continue to apply to such information and, without limitation to the foregoing, Business Associate shall extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. A senior officer of Business Associate shall certify in writing to the Client within five (5) days after termination or expiration of this Agreement that all PHI has been returned or disposed of as required above.

6. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. In the event the Client determines in its sole discretion that amendment to this Agreement is necessary to comply with HIPAA and the HIPAA Regulation, upon the Client's request, Business Associate agrees to promptly enter into negotiations with the Client concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. Notwithstanding any other provision herein, the Client may terminate this Agreement and the services of Business Associate, without penalty, upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the Client pursuant to this Section; or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Client, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations or any other applicable laws relating to the security or privacy of PHI.
7. **Indemnification.** Business Associate will, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Client and his/her respective employees, directors, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorney's fees, including at trial and appeal), asserted or imposed against any Indemnities arising out of the action or omissions of Business Associate or any subcontractor or any of Business Associate's employees, directors, or agents related to the performance or nonperformance of this agreement.
8. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.
9. **Notices.** All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or mailed by registered or certified mail, as follows (provided that notice of change of address shall be deemed given only when received):

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

[Program Site]

City of Minneapolis

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____