

## **BUSINESS ASSOCIATE AGREEMENT AND SERVICE LEVEL AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter agreement) is between Tennessee Department of Health (hereinafter Covered Entity) and **BUSINESS ASSOCIATE** (hereinafter Business Associate). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

### **BACKGROUND**

Covered Entity acknowledges that it is subject to the Privacy Rule (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

Business Associate acknowledges that effective February 17, 2010, the American Recovery and Reinvestment Act of 2009 (Pub. L.111-5), pursuant to Title XIII of Division A and Title IV of Division B, entitled the "Health Information Technology for Economic and Clinical Health" (HITECH) Act, which modifies the HIPAA Privacy and Security Rules, subjects and obligates the Business Associate to protect patient health information to the same extent and manner as the Covered Entity under the Privacy Rule (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191. 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 shall apply to a business associate of a covered entity in the same manner that these sections apply to the covered entity.

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information (PHI) (defined in Section 1.7 below). Said Service Contracts are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein. In accordance with the federal privacy regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and E, which require Covered Entity to have a written contract with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, execute this Agreement.

### **1. DEFINITIONS**

1.1. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.304, 164.501 and 164.504.

1.2. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of the protected health information except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. 42 U.S.C.A. § 17921.

1.3. "Breach of the security system" under T.C.A. § 47-18-2107 means unauthorized acquisition of unencrypted computerized data that materially compromises the security of confidentiality or integrity of personal information maintained by the information holder.

1.4. "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.5. "Electronic Health Record" shall have the same meaning as set forth in the HITECH Act, "Electronic Protected Health Information" shall have the same meaning as set forth in 45 C.F.R. § 160.103, limited to the information that the Business Associate creates, receives, maintains, or transmits for or on behalf of the Covered Entity.

1.6. "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.7. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.8. "Information Holder" means any person or business that conducts business in this state, or any agency of the state of Tennessee or any of the political subdivisions, that owns or stores computerized data that includes personal information. T.C.A. § 47-18-2107(a)(2).

1.9. "Personal Information" means an individual's first name or first initial and last name, in combination with any one (1) or more of the following data elements, when either the name or the data elements are not encrypted: social security number, drivers license number, or account number, credit or debit card number; in combination with required security code, access code, or password that would permit access to an individual's financial account. T.C.A. § 47-18-2107(a)(3)(A)

1.10. "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).

1.11. "Privacy Rule" shall mean the Standards for Privacy for Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E.

1.12. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.13. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.501.

1.14. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

1.15 "Security Event" shall mean an immediately reportable subset of security incidents which would include:

a) a suspected penetration of Business Associate's information system of which the Business Associate becomes aware but for which it is not able to verify within FORTY-EIGHT (48) HOURS (of the time the Business Associate became aware of the suspected incident) that PHI or other confidential data was not accessed, stolen, used, disclosed, modified, or destroyed;

b) any indication, evidence, or other security documentation that the Business Associate's network resources, including, but not limited to, software, network routers, firewalls, database and application servers, intrusion detection systems or other security appliances, may have been damaged, modified, taken over by proxy, or otherwise compromised, for which Business Associate cannot refute the indication within FORTY-EIGHT (48) HOURS of the time the Business Associate became aware of such indication;

c) a breach of the security of the Business Associate's information system(s)(see definition 1.3 above), by unauthorized acquisition, including, but not limited to, access to

or use, disclosure, modification or destruction, of unencrypted computerized data and which incident materially compromises the security, confidentiality, or integrity of PHI; and/or

d) the unauthorized acquisition, including, but not limited to, access to or use, disclosure, modification or destruction, of unencrypted PHI or other confidential information of the Covered Entity by an employee or authorized user of Business Associate's system(s) which materially compromises the security, confidentiality, or integrity of PHI or other confidential information of the Covered Entity.

e) a security incident involving 500 or more patients shall be reported to HHS immediately and a security incident involving less than 500 patients shall be reported to HHS annually.

If data acquired (including, but not limited, to access to or use, disclosure, modification or destruction of such data) is in encrypted format but the decryption key which would allow the decoding of the data is also taken, the parties shall treat the acquisition as a breach for purposes of determining appropriate response.

1.16. "Security Incident" shall mean the attempt or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.17. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information" at 45 C.F.R. Parts 160 and 164, Subparts A and C.

1.18. "Services Agreement" shall mean any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to the covered entity which involves the use or disclosure of Protected Health Information. The services Agreement is amended by and incorporates the terms of the business associate agreement.

1.19. "Unsecured Protected Health Information" is protected health information that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C.A. § 17932(h)(2) decoding of the data is also taken, the parties shall treat the acquisition as a breach for purposes of determining appropriate response.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)**

2.1. Business Associate agrees to fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose Protected Health Information other than as permitted or required by this Agreement, Service Contracts as required by law. In case of any conflict between this Agreement and Service Contracts, this Agreement shall govern.

2.2. Business Associate agrees to implement administrative, including policies, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI, including EPHI, that it creates, receives, maintains, or that it transmits on behalf of the covered entity to prevent use or disclosure of PHI other than as provided for by this Agreement. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose PHI only as permitted or required by this Agreement and taking related disciplinary actions for inappropriate use or disclosure as necessary.

2.3 Business Associate shall, following a breach of unsecured PHI, as defined in the HITECH Act, immediately notify the Covered Entity pursuant to the terms of 45 C.F.R. § 164.410,

cooperate in the Covered Entity's analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by the Business Associate as of the first day on which such breach is known or should have been known or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate will provide notification to the Covered Entity without unreasonable delay and in no event later than five (5) business days of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure. Such notification will contain the elements required in 45 C.F.R. § 164.410; and

2.4 Business Associate shall, pursuant to the HITECH Act and its implementing regulations, comply with all additional applicable requirements of the Privacy Rule, including those contained in 45 C.F.R. §§ 164.502(e) and 164.504(e)(1)(ii), at such time as the requirements become applicable to Business Associates. Business Associate will not accept payment in exchange for PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable patient/individual. Business associate shall not engage in any communication which might be considered marketing under the HITECH Act. Further, business Associate shall, pursuant to the HITECH Act and its implementing regulations, comply with applicable requirements of the Security Rule, contained in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316, at such time as the requirements are applicable to Business Associates.

2.5 Business Associate shall within ten (10) business days of a written request from the Covered Entity and its agents or subcontractors allow the Covered Entity to conduct a reasonable inspection of the facility, systems, books, records agreements, policies and procedures relating to the use, or disclosure of protected health information pursuant to this Agreement for the purpose of monitoring compliance with the terms of this Agreement.

2.6. Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, created or received by, Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.7. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement. Business Associate agrees to require its employees, agents, and subcontractors to immediately report, to Business Associate, any use or disclosure of Protected Health Information in violation of this Agreement, and to report to Covered Entity any use or disclosure of the PHI not provided by or agreed upon in this Agreement.

2.8. If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate agrees to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, provided that Business Associate shall have at least thirty (30) days from Covered Entity's notice to provide access to, or deliver such information.

2.9. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 C.F.R. §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least thirty (30) days from Covered Entity notice to make an amendment.

2.10. Business Associate agrees to make its internal practices, books, and records including policies and procedures and Protected Health Information, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity

available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.11. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 C.F.R. §164.528.

2.12. Business Associate agrees to provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528, provided that Business Associate shall have at least thirty (30) days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the Protected Health Information was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure.

2.13. Business Associate agrees it must use reasonable efforts to limit any use, disclosure, or request for use of disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.14. Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.15. Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Agreement, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

2.16. Business Associate agrees to adequately and properly maintain all Protected Health Information received from, or created or received on behalf of Covered Entity, document subsequent uses and disclosures of such information by Business Associate, and upon request provide Covered Entity with reasonable access to examine and copy such records and documents during normal business hours of Business Associate.

2.17. Business Associate agrees that Covered Entity may at any time review Business Associate's privacy policies and procedures to determine whether they are consistent with Covered Entity's policies, procedures, and privacy practices, and shall promptly notify Business Associate in writing regarding any modifications Covered Entity may reasonably believe are needed in order to meet Covered Entities requirements.

2.18. If Business Associate receives a request from an individual for a copy of the individual's Protected Health Information, and the Protected Health Information is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.

2.19. Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule

### **3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)**

3.1. Business Associate agrees to fully comply with the requirements under the Security Rule applicable to “business associates” as such terms are defined in the Security Rule. In case of any conflict between this Agreement and Service Contracts, this Agreement shall govern.

3.2. Business Associate Agrees to 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 the covered entity as required by the Security Rule. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating the same restrictions and conditions in this Agreement with Business Associate regarding PHI.

3.4. Tennessee Consumer Notice of System Breach. Business Associate understands that the Covered Entity is an “information holder” (as may be Business Associate) under the terms of T.C.A. § 47-18-2107, and that in the event of a breach of the Business Associate’s security system as defined by that statute and Definition 1.7 of this agreement, the Business Associate shall indemnify and hold Covered Entity harmless for expenses and/or damages related to the breach. Such obligations shall include, but are not limited to, notifications to any Tennessee resident whose personal information is reasonably believed to have been acquired by an unauthorized individual. In the event that the Business Associate discovers circumstances requiring notification of more than a thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. §1681a, of the timing distribution and content of the notices. Substitute notice as defined T.C.A. § 47-18-2107(e)(2) and (3), shall not be permitted except as approved in writing in advance by the Covered Entity.

3.5. Reporting of Security Incidents. The Business Associate shall track all security incidents as defined by HIPAA. The Business Associate shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for Business Associate’s operations. However, the Business Associate shall expediently notify the Covered Entity’s Privacy Officer of any Security Incident which would constitute a Security Event as defined by this Agreement, including any “breach of the security of the system” under T.C.A. § 47-18-2107, in a preliminary report within five (5) business days of any unauthorized acquisition including, but not limited to, use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware with a full report of the incident within ten (10) business days of the time it became aware of the incident.

3.5.1 Business Associate shall identify in writing key contact persons for administration, data processing, marketing, information systems and audit reporting. Upon request, Business Associate shall notify Covered Entity of any reduction of in-house staff persons during the term of this Agreement in writing within ten (10) business days.

3.6 Contact for Security Event Notice. Notification for the purposes of Sections 2.7, 3.4 and 3.5 shall be in writing made by certified mail or overnight parcel, with supplemental notification by facsimile and/or telephone as soon as practicable, to the designated Privacy Official of the Covered Entity in accordance to 8.5 Notices and Communications.

3.7 Security Compliance Review upon Request. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

3.8 Cooperation in Security Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Security Rule.

#### **4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

4.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contracts, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

4.2. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate. In the event a party to this Agreement receives a subpoena, court order, or other demand for the information in this Agreement, the receiving party shall immediately inform the other party in writing concerning the demand.

4.3. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or provided that, if Business Associate discloses any Protected Health Information to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality of Protected Health Information and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality of the Protected Health Information is breached.

4.4. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(l)(B).

#### **5. OBLIGATIONS OF COVERED ENTITY**

5.1. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

5.2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses.

5.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. §

164.522, to the extent that such restriction may affect Business Associate's use of Protected Health Information.

## **6. PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## **7. TERM AND TERMINATION**

7.1. Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, Section 7.3 below shall apply.

### **7.2. Termination for Cause.**

7.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy Rule or this Agreement.

7.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate,

7.2.2.1. Covered Entity shall, whenever practicable, provide a reasonable opportunity for Business Associate to remedy the breach or end the violation.

7.2.2.2. If Business Associate has breached a material term of this Agreement and remedy is not possible or if Business Associate does not remedy a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and Service Contracts.

7.2.2.3. If neither remedy nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

### **7.3. Effect of Termination.**

7.3.1. Except as provided in Section 7.3.2 below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

7.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is unfeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such Protected Health Information.



## 8. MISCELLANEOUS

8.1. Regulatory Reference. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

8.2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy Rule, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.

8.3. Survival. The respective rights and obligations of Business Associate under Section 7.3. of this agreement shall survive the termination of this Agreement.

8.4. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy Rule.

8.5. Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

### COVERED ENTITY:

Tennessee Department Of Health  
Timothy Gregory,  
Privacy Officer  
710 James Robertson Parkway,  
5<sup>th</sup> Floor  
Nashville, TN 37243  
Telephone: 615-2533-5637 or  
877-280-0054  
Fax: 615-253-3926

### BUSINESS ASSOCIATE:

Business Associate Name  
Name and Title  
Address  
Telephone: number  
Fax: number

Tennessee Department of Health  
Mike Moak,  
Security Officer  
710 James Robertson Parkway,  
6<sup>th</sup> Floor  
Nashville, TN 37243  
Telephone: 615-741-0899  
Fax: 615-532-9031

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All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

8.6. Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy

upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

8.7. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

8.9. Compensation. There shall be **no** remuneration for performance under this HIPAA Business Associate Agreement except as specifically provided by, in, and through, contractual relationships referenced herein.

**IN WITNESS WHEREOF,**

**TENNESSEE DEPARTMENT OF HEALTH:**

\_\_\_\_\_  
**JOHN J. DREYZEHNER, MD, MPH, FACOEM, COMMISSIONER** **DATE**

**BUSINESS ASSOCIATE LEGAL ENTITY NAME:**

\_\_\_\_\_  
**NAME AND TITLE** **DATE**