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SAMPLE
BUSINESS ASSOCIATE CONTRACT

This Business Associate Contract is between _____
 (“Covered Entity”), a Michigan Corporation, and _____
 (“Business Associate”).

Background

Covered Entity acknowledges that it is subject to the Privacy Rule (45 CFR 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 provides services to Covered Entity. The arrangements by which Business Associate renders services to Covered Entity are set forth in a written agreement (“the Services Agreement”). In the course of providing such services to Covered Entity, Business Associate may come into contact with, use or disclose Protected Health Information (“PHI”) of individuals

This Business Associate Contract (“Contract”) shall be considered an amendment to the Service Agreement and shall remain in effect during the entire period the Services Agreement is in effect. In addition, portions of this Contract shall remain in effect subsequent to the termination of the Services Agreement, as provided in this Contract.

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1. Definitions.

- A. Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.
- B. “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- C. “Privacy Rule” shall mean the Standards for Privacy for Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- D. “Protected Health Information” (“PHI”) shall have the same meaning as the term “protected health information” in 45 CFR 164.501 limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- E. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.501.
- F. “Secretary” shall mean the Secretary of the Department of Health in Human Services or his designee.

2. Obligations and Activities of Business Associate.

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Contract, the Services Agreement or as required by law. In case of any conflict between this Contract and the Services Agreement, this Contract shall govern.

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- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Contract.
- C. 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 Contract
- D. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Contract.
- E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, created by or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Contract to Business Associate with respect to such information.
- F. 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 CFR 164.524.
- G. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the covered Entity directs or agrees to pursuant to the 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

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- H. Business Associate agrees to make its internal practices, books, and records 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 at the request of the Covered Entity, to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
 - I. Business Associate agrees to document such 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 CFR 164.528.
 - J. Business Associate agrees to provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Contract, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR 164.528.
3. Permitted Uses and Disclosures by Business Associate.
- A. Except as otherwise limited in this Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

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- B. Except as otherwise limited in this Contract, Business Associate may disclose PHI for the proper management and administration of the Business Associate, 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - C. Except as otherwise limited in this Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(I)(B).
4. Obligations of Covered Entity.
- A. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
 - B. Covered Entity shall 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.
 - C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

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5. Permissible 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 the Privacy Rule if done by Covered Entity.

6. Term and Termination.

A. Term. The Term of this Contract shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI 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 PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide a reasonable opportunity for Business Associate to cure the breach or end the violation and terminate this Contract and the Services Agreement. If Business Associate has breached a material term of this Contract and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by Covered Entity, Covered Entity may immediately terminate this Contract and the Services Agreement.

C. Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this contract, for any reason, Business Associate

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shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Miscellaneous.

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. The Parties agree to take such action as is necessary to amend this Contract 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.

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- C. Survival. The respective rights and obligations of Business Associate under Section [Insert Section Number Related to “Effect of Termination”] of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.