

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is entered into between Home Centered Care Institute (“Business Associate”) and [Client] (“Covered Entity”), in relation to the services Business Associate provides Covered Entity pursuant to any current or future agreements that the Parties may enter into (each agreement, a “Related Agreement” and collectively, the “Related Agreements”).

RECITALS

WHEREAS, Covered Entity and Business Associate are parties to the Related Agreement; and

WHEREAS, Covered Entity and Business Associate acknowledge and agree that the execution and delivery of this Agreement is necessary for Covered Entity and Business Associate to comply with the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act, also known as the Health Information Technology for Economic and Clinical Health Act and their implementing regulations (collectively, “HIPAA”).

NOW THEREFORE, for and in consideration of the recitals herein above set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Business Associate and Covered Entity hereby agree as follows:

I. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA or the Related Agreement.

II. Obligations of Business Associate

- A. **Use and Disclosure of Protected Health Information.** Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Related Agreement or as Required By Law.
- B. **Minimum Necessary Requirement.** Business Associate shall limit any request, use or disclosure of Protected Health Information to the minimum amount of Protected Health Information reasonably necessary to accomplish the intended purposes of the request, use, or disclosure. To the extent practicable, Business Associate shall omit Direct Identifiers from all uses, disclosures or requests for Protected Health Information.
- C. **Safeguarding Against Improper Use and Disclosure.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.

D. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect, that is known to Business Associate, of a use or disclosure of Protected Health Information by Business Associate in violation this Agreement or HIPAA.

E. **Disclosures to Third Parties.** Except as set forth in Section III(C) of this Agreement, Business Associate shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor that receives, uses, or has access to Protected Health Information. Business Associate shall ensure that the written agreement obligates the Subcontractor to comply with the materially same restrictions and conditions that apply to Business Associate under this Agreement and HIPAA.

F. **Designated Record Set.**

1. Business Associate agrees to provide access, at the request of Covered Entity, within two (2) business days of receiving a request, to Protected Health Information 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. This provision is not applicable if Business Associate does not have Protected Health Information in Covered Entity's Designated Record Set.

2. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR 164.526, within five (5) business days of receiving such request. This provision shall not apply if Business Associate does not have Protected Health Information in Covered Entity's Designated Record Set.

G. **Availability of Books and Records.**

1. Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information, available to the Covered Entity within five (5) business days of receiving a request.

2. Business Associate agrees to allow the Secretary to audit Business Associate's internal practices, books, records, policies, and procedures, as they relate to the use and disclosure of Protected Health Information, for purposes of determining Covered Entity's compliance with HIPAA.

H. **Accounting of Disclosures.**

1. Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures, in accordance with 45 CFR 164.528.

2. Business Associate agrees to provide to Covered Entity, or to an Individual, at Covered Entity's request, information collected in accordance with Section II(H)(1) of this Agreement, within three (3) business days of receiving the request, in order to allow

Covered Entity to respond to a request by the Individual for an accounting of disclosures of Protected Health Information.

I. Compliance with HIPAA.

1. Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of its functions, activities, or services for, or on behalf of, Covered Entity.

2. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity.

3. Business Associate agrees to render Electronic Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary pursuant to HIPAA.

4. Business Associate shall report to Covered Entity any successful unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information or interference with system operations in an information system containing Electronic Protected Health Information. Business Associate shall report to Covered Entity the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify or destroy Electronic Protected Health Information or interfere with system operations in an information system containing Electronic Protected Health Information, provided that:

a. such reports will be provided only as frequently as the parties mutually agree, but no more than once per month; and

b. if the definition of "Security Incident" under the Security Rule is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy Electronic Protected Health Information, this section addressing the reporting of unsuccessful, unauthorized attempts, will no longer apply as of the effective date of such amendment.

5. Notwithstanding the foregoing, the parties understand that pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks and any combination of the above shall not be considered a Security Incident, so long as no such incident results in the defeat or circumvention of any security control, or in the unauthorized access, use or disclosure of PHI provided by Covered Entity.

J. Reporting Breaches and Improper Disclosures.

1. In the event of a Breach of Unsecured Protected Health Information, Business Associate agrees to notify Covered Entity of the Breach, without unreasonable delay,

and no more than two (2) days after the discovery of the Breach. Business Associate agrees to treat a Breach as discovered on the first day on which the Business Associate, or an employee, officer, or an agent knew of the Breach or should have known of the Breach if it had exercised due diligence. Business Associate shall coordinate with the Covered Entity to: (i) investigate the Breach, (ii) inform all affected Individuals, and (iii) mitigate the harmful effects of the Breach. Business Associate will, at a minimum, provide Covered Entity with the following information in each notification in accordance with 45 C.F.R. 164.404:

- a. point of contact information;
 - b. brief description of what occurred with respect to the Breach, including, to the extent known, the date of the Breach and the date on which the Breach was discovered;
 - c. description of the types of Unsecured Protected Health Information that were disclosed during the Breach; and
 - d. a description of what the Business Associate is doing to investigate the incident and protect against further incidents.
2. Business Associate agrees to report to Covered Entity within two (2) days of discovery, any use or disclosure of Protected Health Information not provided for by this Agreement.

III. Permitted Uses and Disclosures by Business Associate

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform its functions, activities, or services for, or on behalf of, Covered Entity (including, pursuant to the Related Agreement), provided that such use or disclosure would not violate HIPAA or the policies and procedures of the Covered Entity.
- B. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for its proper management and administration or to carry out the legal responsibilities of the Business Associate.
- C. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information to third parties for the purpose of its proper management and administration, or to carry out the legal responsibilities of the Business Associate, provided that the disclosures are Required By Law.
- D. If expressly authorized by the Related Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services, if applicable, to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- E. Business Associate may use Protected Health Information to report violations of law to the appropriate Federal and State authorities, pursuant to 45 CFR 164.502(j)(1).

IV. Obligations of Covered Entity

- A. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with its Notice of Privacy Practices, and will notify Business Associate of any changes to its Privacy Practices, if such changes affect Business Associate's use or disclosure of Protected Health Information.
- B. **Revocation of Permitted Use or Disclosure of Protected Health Information.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's use or disclosure of Protected Health Information.
- C. **Restrictions on Use or Disclosure of Protected Health Information.** 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 CFR 164.522.

V. Permissible Requests by Covered Entity

Covered Entity shall not request that Business Associate use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule. In the event that the Related Agreement expressly authorizes Business Associate to provide Data Aggregation services, Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

VI. Term and Termination

- A. **Term.** This Agreement shall be effective upon execution, 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.
- B. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
1. provide a reasonable opportunity for Business Associate to cure the breach or end the violation within five (5) days of receiving notice of the breach, or terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
 2. immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible
- C. **Effect of Termination.**
1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information in the possession of Business Associate. Business Associate shall retain no copies of the Protected Health Information. This provision shall apply to

Protected Health Information that is in the possession of Subcontractors or agents of Business Associate.

2. In the event that Business Associate and Covered Entity agree that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. 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 infeasible, for so long as Business Associate maintains the Protected Health Information.

VII. Insurance

During the term of this Agreement, Business Associate will maintain the types of insurance and levels of coverage that are industry standard in Business Associate's line of business as well as any coverage required in the Related Agreement.

VIII. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to the conflicts of laws doctrine of such state; and venue and jurisdiction is agreed proper in the State of Illinois.

IX. Miscellaneous

A. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended.

B. **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 and Business Associate to comply with the requirements of the HITECH Act, the Privacy Rule, the Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

C. **Survival.** The respective rights and obligations of Business Associate under Section VI and VII of this Agreement shall survive the termination of this Agreement.

D. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HITECH Act, the Privacy Rule and the Security Rule.

E. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties in connection with the subject matter hereof. The parties agree that this Agreement is entered separate and apart from the Related Agreement. In the event of any conflict between the body of this Agreement and the Related Agreement, the terms and provisions of this Agreement shall control.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by duly authorized officers as of the day and year first written above.

HCCI:
Home Centered Care Institute, Inc.
an Illinois Not-for-Profit Corporation

Client:
[Client Name]

Name: _____

Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____