



## Region IV Area Agency on Aging Business Associate Agreement

This Business Associate Agreement (the “BAA”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between Region IV Area Agency on Aging, (“Covered Entity”), and \_\_\_\_\_ (“Business Associate”) (each a “Party” and collectively the “Parties”).

**WHEREAS**, Business Associate has entered into a contract with a covered entity (the “Covered Entity”) to provide services to Covered Entity (the “Covered Entity Contract”);

**WHEREAS**, in providing services pursuant to the Covered Entity Contract, Covered Entity may disclose Protected Health Information (“PHI”) (as defined below) to Business Associate;

**WHEREAS**, to assist in providing certain services to Covered Entity pursuant to the Covered Entity Contract, Covered Entity has entered into a contract with Business Associate to provide certain specified Services to Covered Entity (the “Underlying Contract(s)”);

**WHEREAS**, in providing Services pursuant to the Underlying Contract(s) with Covered Entity, Business Associate may also have access to PHI;

**WHEREAS**, Business Associate entered into a Business Associate Agreement with Covered Entity whereby the Business Associate has agreed to require any agent or contractor, to whom it provides PHI received from or on behalf of the Covered Entity, to agree to the same restrictions and conditions that apply to the Business Associate through the Business Associate Agreement;

**WHEREAS**, Business Associate is further required by law to assure that Business Associate and any agent or contractor adheres to the certain privacy requirements as provided under the privacy and security regulations issued under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), as set forth in 45 C.F.R. Parts 160 and 164, and as amended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111-5 (the “HIPAA Privacy Rule” and “HIPAA Security Rule”);

**WHEREAS,** Covered Entity and Business Associate wish to modify the Underlying Contract(s) to include certain provisions required by the HIPAA Privacy Rule and HIPAA Security Rule;

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions contained herein and the continued provision of PHI by Covered Entity to Business Associate under the Underlying Contract(s) in reliance on this BAA, the Parties agree as follows:

**1. DEFINITIONS.** For purposes of this BAA, the terms below shall have the meanings given to them in this Section. Other capitalized terms used in the HIPAA Privacy Rule and HIPAA Security Rule, but not defined in this BAA, shall have the same meaning as those terms are defined in the HIPAA Privacy Rule and HIPAA Security Rule.

**1.1 Business Associate** shall mean the entity or entities identified above as Business Associate.

**1.2 Covered Entity** shall mean Region IV Area Agency on Aging.

**1.3 Data Aggregation** shall mean, with respect to PHI created or received by Business Associate in the capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in the capacity as a Business Associate of another covered entity, to permit data analyses that relate to the Health Care Operations (defined below) of the respective Covered Entities. The meaning of “data aggregation” in this Amendment shall be consistent with the meaning given to that term in the Privacy Rule.

**1.4 Designated Record Set** shall mean a group of Records maintained by or for the Covered Entity that: (a) consists of medical records and billing records about individuals maintained by or for the Covered Entity; (b) consists of the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) consists of Records used, in whole or part, by or for the Covered Entity to make decisions about individual patients. As used herein, the term “Record” shall mean any item, collection or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for a provider. The term “designated record set,” however, shall not include any information in the possession of Business Associate that is (i) the same as information in the possession of Covered Entity (information shall

be considered the same information even if the information is held in a different format, medium or presentation or it has been standardized); (ii) any information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding, including but not limited to, any information subject to the attorney-client privilege, trial preparation immunity, attorney work product, peer review privilege or other privilege under applicable law; or (iii) any information that constitutes “psychotherapy notes” as defined in 45 C.F.R. § 164.501.

**1.5 De-Identify** shall mean to alter the PHI such that the resulting information meets the requirements described in 45 C.F.R. § 164.514(a) and (b).

**1.6 Disclosure** shall mean the same as the term “disclosure” means in 45 C.F.R. § 164.501.

**1.7 Effective Date** shall mean the date first written above.

**1.8 Electronic PHI (“ePHI”)** shall mean any PHI maintained in or transmitted by electronic media as defined in 45 C.F.R. § 160.103.

**1.9 Health Care Operations** shall have the meaning given to that term at 45 C.F.R. § 164.501.

**1.10 HHS** shall mean the U.S. Department of Health and Human Services.

**1.11 HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the America Recovery and Reinvestment Act of 2009, Public Law 111-5.

**1.12 Individual** shall mean the same as the term “individual” means 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).

**1.13 Privacy Rule** shall mean that portion of the HIPAA Regulations set forth in 45 C.F.R. Part 160 and in parts A and E of 45 C.F.R. Part 164.

**1.14 Protected Health Information or PHI** shall mean information transmitted or maintained in any form or medium, including demographic information collected from an individual, that (i) is created or received by Business Associate; and (ii)

related to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, and (a) identifies the individual or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**1.15 Security Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. This term shall not include trivial incidents that occur on a daily basis, such as scans, “pings,” or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate.

**1.16 Secretary** shall mean the Secretary of the Department of Health and Human Services, or his or her designee.

**1.17 Services** means the services provided by Business Associate, as specified in the Underlying Contract(s).

**1.18 Unsecured PHI** shall mean PHI that has not been secured in accordance with standards promulgated by the Secretary of HHS under Section 13402(h)(2) of the HITECH Act.

**1.19 Use** shall mean the same as “use” means in 45 C.F.R. § 164.501.

**2. Use and Disclosure of PHI -** With regard to its Use and/or Disclosure of PHI, Business Associate agrees to:

**2.1** Not Use or Disclose PHI other than as permitted or required by this BAA or as Required by Law. Business Associate may Use and Disclose PHI only if its Use or Disclosure is in compliance with each applicable requirement of section 164.504(e) of title 45 of the Code of Federal Regulations.

**2.2** Except as otherwise provided in this BAA, use or disclose PHI as reasonably necessary to provide the Services described in the Underlying Contract(s) to the Covered Entity, and to undertake other activities of Business Associate permitted or required of Business Associate by this BAA or as required by law.

- 2.3** Except as otherwise limited by this BAA, use PHI in its possession for the proper management and administration of Business Associate's business and to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI for its proper management and administration, provided that (i) such disclosures are required by law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from such third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purposes for which it was disclosed to such third party; and (b) an agreement from such third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of such breach.
- 2.4** Use or disclose only the minimum necessary amount of PHI, in accordance with Section 13405(b) of the HITECH Act, or any implementing regulations adopted thereunder for each use or disclosure of PHI hereunder.
- 2.5** Make available to Covered Entity upon request any PHI that Business Associate has received from Covered Entity or created for the purposes of performing Services pursuant to the Underlying Contract(s) that Business Associate has in its possession.
- 3. Appropriate Safeguards to Prevent Misuse of PHI.** Business Associate agrees to:
- 3.1** Use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA.
- 3.2** Implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards (the "Safeguards") that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Business Associate creates, receives, maintains, or transmits on behalf of Business Associate and/or Covered Entity. Business Associate agrees to take reasonable steps to ensure that the actions or omissions of its employees or agents do not cause Business Associate to breach the terms of this BAA.
- 4. Agreements with Agents or contractors.** Business Associate shall ensure that any of its agents and contractors that have access to or to which Business Associate provides PHI agree in writing to the restriction and conditions concerning uses and disclosures of PHI contained herein and agree to implement reasonable and appropriate Safeguards to

protect any ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity.

5. **Availability of Books and Records.** Business Associate shall make available its internal practices, books, and records relating to the use and disclosure of PHI, upon request, to the Secretary of HHS for purposes of determining Business Associate and/or Covered Entity's compliance with the HIPAA Privacy Rule, the HIPAA Security Rule, and the BAA.
6. **Reporting Disclosures of PHI and Security Incidents.** Business Associate agrees to report to Covered Entity any Use or Disclosure of PHI not provided for by this BAA of which Business Associate becomes aware. Business Associate agrees to report to Covered Entity any Security Incident affecting ePHI of Covered Entity of which Business Associate becomes aware. Business Associate agrees to report any such event without unreasonable delay, but in no event later than ten (10) business days of becoming aware of the event.
7. **Reporting Breaches of PHI.** Business Associate shall notify Covered Entity in writing without unreasonable delay after discovery of any Breach of Unsecured PHI in accordance with 45 C.F.R. § 164.410, but in no case later than ten (10) business days after discovery. Business Associate shall provide information regarding such Breach, including, to the extent possible, (i) identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such breach; (ii) date of the breach; (iii) types of PHI involved; and (iv) mitigation actions taken by Business Associate. Thereafter, the information shall be timely supplemented with additional information as may be obtained by Business Associate.
8. **Mitigation of Disclosures of PHI.** Business Associate shall use reasonable commercial efforts to mitigate any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate or its agents or contractors in violation of the requirements of this BAA.
9. **Access to PHI by Individuals.**
  - 9.1 Upon request, Business Associate agrees to furnish Covered Entity with copies of the PHI maintained by Business Associate in a Designated Record Set to enable Covered Entity to provide access to the PHI under 45 C.F.R. § 164.524, in the time and manner designated by the Covered Entity.

- 9.2** In the event, any individual or personal representative requests access to the individual's PHI directly from Business Associate, Business Associate shall forward that request promptly to Covered Entity. Any disclosure of, or decision not to disclose, the PHI requested by an individual or a personal representative and compliance with the requirements applicable to an individual's right to obtain access to PHI shall be the responsibility of Covered Entity.

**10. Amendment of PHI.**

- 10.1** Upon request from Covered Entity, Business Associate shall amend PHI or a record about an individual in a Designated Record Set that is maintained by, or otherwise within the possession of, Business Associate, as directed by Covered Entity in accordance with procedures established by 45 C.F.R. § 164.526. Any such request to amend such information shall be completed by Business Associate within fifteen (15) business days of Covered Entity's written request.
- 10.2** In the event that an individual request that Business Associate amend such individual's PHI or Record in a Designated Record Set, Business Associate shall forward such request promptly to Covered Entity. Any amendment of, or decision not to amend, the PHI or Record as requested by an individual and compliance with the requirements applicable to an individual's right to request an amendment of PHI shall be the sole responsibility of the Covered Entity.

**11. Accounting of Disclosures.**

- 11.1** Business Associate shall document any disclosures of PHI made by it, to the extent that Business Associate would have an obligation to account for such disclosures pursuant to the HIPAA Privacy Rule and/or HIPAA Security Rule. Business Associate also shall make available information related to such disclosures as would be required for Business Associate to respond to a request for an accounting of disclosures. At a minimum, Business Associate shall furnish Covered Entity the following with regard to any covered disclosure by Business Associate: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and, if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation that reasonably informs the individual of the basis for such disclosure.

- 11.2** Business Associate agrees to implement an appropriate recordkeeping system to enable it to comply with the requirements of this Section. Business Associate agrees to retain such records for a minimum of ten (10) years.
- 11.3** Business Associate shall furnish to Covered Entity information collected in accordance with this Section, promptly, but in no event later than thirty (30) days after written request by the Covered Entity, to permit Business Associate to make an accounting of disclosures.
- 11.4** In the event that an individual delivers the request for an accounting directly to Business Associate, Business Associate shall forward such request promptly to Covered Entity.

**12. Term and Termination.**

- 12.1** This BAA shall become effective on the date first written above, and shall continue in effect until all obligations of the Parties have been met under the BAA and the Underlying Contract(s). This BAA shall replace and take precedence over any prior BAA entered into between the Parties.
- 12.2** Either Party may terminate immediately this BAA, the Underlying Contract(s), and any other related agreements if that Party makes a determination that the other Party has breached a material term of this BAA and the defaulting Party has failed to cure that material breach to the non-defaulting Party's reasonable satisfaction within thirty (30) days after written notice from the non-defaulting Party.
- 12.3** Upon termination of the BAA or Underlying Contract(s) for any reason, all PHI maintained by Business Associate shall be retained by Business Associate on behalf of Covered Entity for a minimum of ten (10) years in a safe and secure area. At the end of this ten-year term, the Business Associate will return, or if agreed by Covered Entity in writing, destroy all PHI information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity. Business Associate shall not retain any copies of such information. This provision shall apply to PHI in the possession of Business Associate's agents and contractors. If return or destruction of the PHI is not feasible, in Covered Entity's judgment, Business Associate shall furnish Covered Entity with notification, in writing, of the conditions that make return or



destruction infeasible. Upon mutual agreement of the Parties that return, or destruction of the PHI is infeasible, Business Associate will extend the protections of this BAA to such information for as long as Business Associate retains such information and will limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. This Section 12.3 shall survive any termination of this BAA.

- 13. Notice.** Any notice required or permitted by this BAA shall be given in writing and delivered by first class mail or overnight delivery service to the receiving party at the following addresses:

**To Covered Entity:**

Region IV Area Agency on Aging  
2900 Lakeview Avenue  
St. Joseph, MI 49085  
Attn: Contracts

**To Business Associate:**

Company Name:  
Address:  
City, State, Zip:  
Attn:

**14. Miscellaneous.**

**14.1 Amendments/Waiver.** This BAA may not be modified, nor shall any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to sequent events.

**14.2 Interpretation and Effect of BAA.** This BAA is part of and subject to the terms of the Underlying Contract(s), except that to the extent any terms of this BAA conflict with any terms of the Underlying Contract(s), the terms of this BAA shall govern.

- 14.3 Regulatory References.** A reference in this BAA to a section in the HIPAA Privacy Rule or the HIPAA Security Rule means the section as amended by the HITECH Act, and as further amended, from time to time.
- 14.4 Indemnification.** Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this BAA. The parties' respective rights and obligations under this Section 14.4 shall survive termination of the BAA.
- 14.5 No Third Party Beneficiaries.** Nothing in this BAA shall confer upon any person, other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 14.6 HITECH Act Compliance.** The Parties acknowledge that the HITECH Act includes significant changes to the HIPAA Privacy Rule and the HIPAA Security Rule. Many of these changes are addressed in this contract but others may be clarified in forthcoming regulations. Each Party agrees to comply with the applicable provisions of the HITECH Act and any implementing regulations issued thereunder. Also, each Party agrees to negotiate in good faith to modify this Agreement as reasonably necessary to comply with the HITECH Act and its implementing regulations, as they become known and effective.

**IN WITNESS WHEREOF**, this BAA is executed by the Parties as of the Effective Date.

[	]	<b>Region IV Area Agency on Aging</b>
[	]	<b>2900 Lakeview Avenue</b>
[	]	<b>St. Joseph, MI 49085</b>

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“Business Associate”

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“Covered Entity”

Print Name:

Print Name: Lynn Kellogg

Signature: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_