



## APPENDIX A

### COMMISSION ON ACCREDITATION OF HOME CARE -PROVIDER HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“the Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Commission on Accreditation of Home Care, (“CAHC”), a New Jersey non-profit corporation, and \_\_\_\_\_, (“Provider”), a health service firm seeking accreditation (or currently accredited) by CAHC.

WHEREAS, the parties desire to enter into this Agreement to memorialize (and, as applicable, to amend and restate any prior agreements regarding) their obligations with respect to the “Standards for Privacy of Individually Identifiable Health Information” (the “Privacy Rule”), the “Security Standards for the Protection of Electronic Protected Health Information” (the “Security Rule”) and all other applicable rules promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1997 (“HIPAA”), and pursuant to Subtitle D of Title XIII of the American Recovery and Reinvestment Act of 2009 (“HITECH Act”), and

WHEREAS, CAHC may receive protected Individually Identifiable Health Information from Provider in fulfilling its accreditation activities related to Provider (the “Services”);

NOW, THEREFORE, in consideration of the mutual promises and agreements in order to comply with all the requirements for the protection of personally identifiable health information that may be transmitted by the Provider to CAHC or its agents, surveyors, or consultants, the parties agree as follows:

**1. Definitions:** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501 and Part 164, Subparts A, C and E, the Security Standards for the Protection of Electronic Protected Health Information and Standards for Privacy of Individually Identifiable Health Information ("Security and Privacy Rule"). The following definitions apply specifically to this Agreement:

- 1.1. Business Associate. “Business Associate” shall mean CAHC.
- 1.2. Covered Entity. “Covered Entity” shall mean Provider.
- 1.3. Individual. “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).
- 1.4. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E (e) Protected Health Information.

- 1.5. “Protected Health Information” or “PHI” is as defined in 45 CFR 160.103, which means individually identifiable health information that represents a subset of health information, including demographic information collected from an individual, that (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates 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 (3) that identifies or reasonably can be used to identify the individual. PHI must also be (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium. For purposes of this Agreement, “Protected Health Information” shall be limited to the Protected Health Information provided by Provider to CAHC, in accordance with CAHC’s accreditation services to Provider.
- 1.6. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.501.
- 1.7. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- 1.8. Security Rule. “Security Rule” shall mean the final rule adopting the standards for the protection of electronic protected health information as set forth at 45 CFR Part 164, Subparts A and C and 45 CFR Part 160.

## **2. Permitted Uses and Disclosures of Protected Health Information by Business Associate:**

Unless otherwise specified herein and provided such uses or disclosures are permitted under state and federal confidentiality laws, Business Associate may:

- 2.1. Use and/or disclose the Protected Health Information in its possession to the extent necessary to perform the Services to Provider, subject to the limits set forth in 54 CFR §164.514 regarding limited data sets and 45 CFR §164.502(b) regarding the minimum necessary requirements;
- 2.2. Use and/or disclose the Protected Health Information as permitted or required under this Agreement or as Required by Law;
- 2.3. Use the Protected Health Information in its possession as directed in writing by Covered Entity;
- 2.4. Except as otherwise limited in this Agreement, use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B);

- 2.5. Use the Protected Health Information in its possession for its own proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate; and
- 2.6. Disclose the Protected Health Information in its possession to third parties for the purpose of its own proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, so long as the Business Associate represents, in writing, to the Covered Entity that (i) the disclosures are Required by Law or (ii) Business Associate has received satisfactory assurances from the person or entity to whom the disclosure is made that (a) the Protected Health Information will be held confidential and further used or disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the Protected Health Information has been breached.

3. **Obligations of Business Associate.** Business Associate shall:

- 3.1. Not use or further disclose the Protected Health Information other than as permitted or required by this Agreement or as Required by Law;
- 3.2. Maintain appropriate physical, technical and administrative safeguards to prevent the use or disclosure of Protected Health Information other than as provided for in this Agreement or as Required by Law;
- 3.3. Require any subcontractors, consultants or business associates to whom it discloses the Protected Health Information to agree to the same restrictions and conditions as apply to Business Associate under this Agreement by causing such person or entity to enter into an agreement containing similar assurances;
- 3.4. To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- 3.5. Promptly report to Provider any use or disclosure of the Protected Health Information not provided for by this Agreement, including breaches of unsecured Protected Health Information as required by 45 CFR 164.410 and any other security incident of which Business Associate becomes aware;
- 3.6. Mitigate to the greatest extent possible, any negative or unintended effects caused by the improper use and/or disclosure of Protected Health Information, or any other security incident, that the Business Associate reports to the Covered Entity;
- 3.7. Make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Covered

Entity, available to the Secretary, in a time and manner designated by the Secretary, for purposes of determining Business Associate's compliance with the Privacy Rule;

3.8. Document any disclosures of Protected Health Information in accordance with 45 CFR 164.528 and provide an accounting of any disclosures of Protected Health Information for up to the six-year period preceding the date of the request for an accounting, and, if applicable, within fifteen (15) days of receiving Covered Entity's written request, provide such information that is necessary for Covered Entity to make an accounting of disclosures of Protected Health Information to the individual requesting such accounting pursuant to 45 CFR 164.528. Such information shall include:

- . the date of the disclosure;
- . the name and address of the person or entity who received the Protected Health Information;
- . a brief description of the disclosed Protected Health Information; and
- . a brief statement of the purpose of the disclosure including an explanation of the basis for such disclosure.

3.9. If applicable, within ten (10) days of receiving a written request from Covered Entity, make available to Covered Entity any Protected Health Information in a Designated Record Set necessary for Covered Entity to respond to an Individuals' requests for access to Protected Health Information as permitted by 45 CFR 164.524; and

3.10. If applicable, within fifteen (15) days of receiving a written request from Covered Entity, incorporate any amendments or corrections to the Protected Health Information in a Designated Record Set in accordance with 45 CFR 164.526.

4. **Obligations of Provider:** Provider agrees as a Covered Entity that it:

4.1. Has included, and will include, in its Notice of Privacy Practices required by the Privacy Rule that it may disclose Protected Health Information for Health Care Operations purposes;

4.2. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to perform their obligations under this Agreement;

4.3. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of Protected Health Information about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under this Agreement; and

4.4. Will promptly notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes or revocation may affect Business Associate's ability to perform its obligations under this Agreement.

## **5. Term and Termination:**

- 5.1. Term. The Term of this Agreement shall be effective as of the date the Covered Entity executes a Memorandum of Understanding Agreement with Business Associate, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate is destroyed or returned to Provider, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2. Termination for Cause. Upon either Party's knowledge of a material breach of a material term of this Agreement, the aggrieved party shall provide an opportunity for the other to cure the breach or end the violation. If the party does not cure the breach, or cure is impossible or the violation is not cured within the time specified by the other party, it may immediately terminate this Agreement.
- 5.3. Effect of Termination.
  - 5.3.1. 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 received from Covered Entity, or created or received by Business Associate's agent or consultant, if any, on behalf of Business Associate. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of any subcontractors.
  - 5.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information 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 Protected Health Information is 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 CAHC maintains such Protected Health Information.

## **6. Miscellaneous:**

- 6.1. Regulatory References. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as amended, and for which compliance is required.
- 6.2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CAHC to comply with the requirements of HIPAA, the HITECH Act and all regulations promulgated thereto, including but not limited to the Privacy Rule and the Security Rule.

- 6.3. Survival. The respective rights and obligations of Business Associate under Paragraph 5 above of this Agreement shall survive the termination of this Agreement.
- 6.4. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with applicable law.
- 6.5. Entire Agreement; Further Assurances. The Agreement is the complete and exclusive statement of the entire agreement between the parties, which supersedes all prior or contemporaneous agreements, oral and written, and all other communications between the parties relating to the subject matter of this Agreement. The Parties agree to execute such other documents as may be required to implement the terms and provisions, and fulfill the intent, of this Agreement. To the extent that the provisions in this Agreement conflict with the terms of any other agreement between the parties, the provisions in this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____ _____ <p style="text-align: center;">Signature</p>	<p style="text-align: right;">Commission on Accreditation of Home Care</p> By _____ _____ <p style="text-align: center;">- Signature</p>
Date: _____	Date: _____