

Business Associate Agreement

This Business Associate Agreement ("Agreement") is made on _____ 20____ year (the "Effective Date"), by and between _____ with a business address at _____ (hereinafter "Covered Entity") and WCH Service Bureau, Inc. with a business address at 3047 Ave U Brooklyn NY 11229 (hereinafter "Business Associate").

Recitals

WHEREAS, Business Associate is providing credentialing services ("Services") for Covered Entity and will have access to Protected Health Information ("PHI").

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations and the HITECH Standards and is permitted to use or disclose such information only in accordance with such laws and regulations.

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which we hereby acknowledge, Business Associate and Covered Entity (together "Parties") agree as follows:

Section 1 - Definitions:

1.1. General definitions:

Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in the Health Information Portability and Accountability Act of 1996, codified as 42 U.S.C. §1320d ("HIPAA"), the Health Information Technology Act of 2009, as codified at 42 U.S.C.A. prec. §17901 (the "HITECH" Act), and any current and future regulations promulgated under HIPAA or HITECH.

1.2. Specific definitions:

- (a) *Business Associate*. "Business Associate" shall mean **WCH Service Bureau, Inc.**
- (b) *Covered Entity* shall mean _____.
- (c) *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (d) *HIPAA* shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

- (e) *HITECH Act*. "HITECH" or "HITECH Act" shall mean the Health Information



Technology for Economic and Clinical Health Act, which is Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(e) *HITECH Standards*. "HITECH Standards" shall mean the privacy, security, and security breach notification provisions Applicable to a Business Associate under Subtitle D of the HITECH Act and any regulations promulgated there under.

(f) *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.

(g) *Protected Health Information*. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(h) *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.

(i) *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(j) *Time*. "Time reasonably designated by Covered Entity" shall be no less than 30 business days from the time of notice.

(k) *Security Incident*. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.

(l) *Unsecured Protected Health Information* shall mean Electronic PHI that is not secured through the use of technology or methodology specified by the Secretary in regulations or as otherwise defined in section 13402(h) of the HITECH Act.

(m) *Manner*. "Manner reasonably designated by Covered Entity" shall mean a paper copy for the paper maintained records, or the software provided methods, for change or copy of PHI, for the electronically maintained records.

(n) *Notify*. "Notify" shall mean a correspondence in writing with proof of delivery, signature required.

(o) *Designated Record Set*. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

(p) *Electronic Protected Health information*. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103.

Section 2

Obligations and Activities of Business Associate

2.1. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

2.2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

2.3. Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured

protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

The parties hereby agree that the covered entity and not the business associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the covered entity.

2.4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business associate's subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

2.5. Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

In the event that the Business Associate receives a request for access from an individual directly, the Business Associate will forward the individual's request to the Covered Entity to fulfill said request within 3 business days from the request received.

2.6. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

The parties agree that in the event that the Business Associate shall receive a direct request from an individual to amend his/her records, Business Associate will forward the individual's request to the Covered Entity within 3 business days of the receipt of such request to incorporate any amendments to the information in the designated record set.

2.7. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity but not to the individual, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

The parties agree that that the Business Associate receives a request for an accounting of disclosures directly from the individual, the Business Associate will forward the request to the Covered Entity within 3 business days of said receipt of the request.

2.8. To the extent the business associate is to carry out one or more of 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); and

2.9. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

2.10. Pursuant to regulations regarding the security of Electronic Protected Health Information, specially 45 CFR §164.314, Business Association agrees to report to Covered Entity and Security Incident involving Electronic Protected Health Information of which it becomes aware and that it will 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 as required by the regulations. In accordance with HITECH §13401 (a), these safeguards include those specified in 45 CFR §164.308 (Administrative Safeguards), 164.310 (Covered Entity Safeguards), 164.312 (Technical Safeguards), and 164.316 (Policies and Procedures and Documentation Requirements).

2.11. Subject to the law enforcement delay exception contained in 45 CFR §164.412, Business Association agrees to notify Covered Entity without unreasonable delay, but in no event later than 30 business days, following the discovery of a Breach of Unsecured Protected Health Information and in accordance with HITECH §13402 and 45 CFR §164.410. Such notification shall contain the elements required in 45 CFR §164.410. In this section, “Breach” shall have the same meaning as the term “breach” in 45 CFR §164.402.

2.12 Notwithstanding any other provision of this Agreement, Business Associate will comply with the HITECH Standards, including:

1. The requirements regarding minimum necessary under HITECH §13405(b) and any regulations or guidance issued by the Secretary regarding minimum necessary requirements;
2. Requests for restrictions on use or disclosure of Protected Health Information to health plans for payment or health care operations purposes when the health care provider has been paid out of pocket in full consistent with HITECH §13405(a) and TMA has been notified of the request for restriction by the health care provider, Physician or the Individual;
3. The prohibition on the sale of Protected Health Information without authorizations unless an exception under HITECH § 13405(d) applies;
4. To the extent required, the provisions of HITECH §13406, including the prohibition on receiving remuneration for certain communication that fall within the exceptions to the definition of marketing under 45 CFR § 164.501 unless permitted by this Agreement and HITECH §13406; and
5. To the extent required, the requirements relating to the provision of access to certain information in electronic format under HITECH §13405(e).

Section 3 **Permitted Uses and Disclosures by Business Associate**

General Use and Disclosure Provisions

3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for purpose of obtaining payment for rendered services, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Specific Use and Disclosure Provisions

3.2. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.3. 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 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 as provided in 45 CFR § 164.504(e)(4)(ii)(B).

3.4. 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 CFR 164.504(e)(2)(i)(B).

3.5. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

3.6. Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

Section 4

Obligations of Covered Entity

4.1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4.3. 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 CFR 164.522 or HITECH §13405(a), to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Section 5

Permissible Requests by Covered Entity

5.1. 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, HIPAA, or HITECH if done by Covered Entity.

Section 6

Term and Termination



6.1. Term. The Term of this Agreement shall be effective as of the date listed above 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, protections are extended to such information, in accordance with the termination provisions in this section, or on the date Covered Entity terminates for cause as authorized in this Section.

6.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.3. 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 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.

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 the Business Association's determination 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 Business Associate maintains such Protected Health Information.

3. Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity or, if agreed to by covered entity, destroy the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;



4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under “Permitted Uses and Disclosures By Business Associate”] which applied prior to termination; and
5. Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

Section 7

Force-Majeure

7.1. Business Associate shall be excused from performance under this agreement for any period Business Associate is prevented from performing any services pursuant hereto, in whole or in part, as a result of an Act of God, war, civil disturbance, court order, or other cause beyond its reasonable control, and such nonperformance shall not be grounds for termination.

Section 8

Miscellaneous

8.1. Regulatory References. 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 HIPAA or HITECH or any applicable regulations with regard to such laws.

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

8.4. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with HIPAA or HITECH, or any other applicable regulations with regards to such laws.

8.5. No Third Party Beneficiaries. Nothing express or implied in this agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8.6. Entire Agreement. This Agreement constitutes the entire agreement between Covered Entity and Business Associate concerning the subject matter hereof, and supersedes all prior understandings, communications, and agreements, whether written or oral, between Covered Entity and Business Associate on this subject matter.

8.7. Prior Agreement. This Agreement shall replace and supersede any prior Business Associate Agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the date written above

“WCH Service Bureau, Inc.” _____(Name of entity)

By: _____
Signature

By: _____
Signature

Title of signature

Title of Signature