

# MICHIGAN CONFIDENTIAL DOCUMENT DESTRUCTION HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into as of this \_\_\_\_\_, day of \_\_\_\_\_, 2012 (“Effective Date”) by and between **Michigan Confidential Document Destruction**, having place of business at 4344 M-32 West, Alpena, MI 49707 (“Company”) and \_\_\_\_\_, having a place of business at \_\_\_\_\_ (“Customer”), effective as of the Effective Date. This Business Associate Agreement supplements the Confidential Document Destruction Agreement entered into between Company and Customer (“Agreement”) pursuant to which Company is providing services for the confidential destruction of records (“Services”).

Company and Customer are entering into this Business Associate Agreement in order for both parties to meet the relevant requirements of HIPAA (hereinafter defined), as well as the provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act.”), along with any accompanying regulations, under which Customer is a “Covered Entity” and Company is a “Business Associate” of Customer. If and to the extent that Customer is not, or subsequently fails to continue to be, a Covered Entity (as defined in HIPAA), or Company is not, or fails to continue to be, a Business Associate (as defined in HIPAA), this Business Associate Agreement shall be of no effect.

This Business Associate Agreement shall be effective only if the Agreement remains in full force and effect and, if so in effect, this Business Associate Agreement shall be effective as of the Effective Date set forth above, with the condition that the requirements mandated by the HITECH Act shall not take effect until February 17, 2010, or such later date as that Act (or any specific component of it) is made effective by law or regulation.

## 1. Definitions:

Capitalized terms not otherwise defined in this Business Associate Agreement or the Confidential Document Destruction Agreement shall have the meanings given to them in HIPAA or the HITECH Act and are incorporated herein by reference

“Business Associate” shall mean Company.

“Covered Entity” shall mean Customer.

“HIPAA” shall mean the HIPAA Privacy Rule and the HIPAA Security Rule implemented pursuant to the Health Insurance Portability and Accountability Act of 1996, as the same may, from time to time, be amended. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, part 160 and part 164, subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards (45 C.F.R. Parts 160, 162, and 164).

The “HITECH Act” shall mean the applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and any accompanying regulations (the “HITECH Act.”).

“Protected Health Information” or “PHI” shall have the same meaning as the term ‘protected health information’ in 45 CFR 164.501 and shall be limited to the information created or received by the Business Associate from or on behalf of Covered Entity.

**2. Obligations and Activities of Business Associate Under the HIPAA Privacy Rule to the Extent Applicable to the Services Provided Under the Agreement.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Business Associate Agreement, the Agreement or as Required by Law, consistent with the HITECH Act. Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of Covered Entity, as specified in the terms of the Agreement and consistent with the HITECH Act. Such use, disclosure or request of PHI shall utilize a limited data set if practicable or otherwise the minimum necessary PHI to accomplish the intended result of the use, disclosure or request.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Business Associate Agreement or the Agreement.
- (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 Business Associate Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Business Associate Agreement or the Agreement. In addition, Business Associate will report, following discovery and without unreasonable delay, any “Breach” of “Unsecured Protected Health Information” as defined by the HITECH Act and any implementing regulations. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions that apply through this Business Associate Agreement with respect to such information.
- (f) To the extent (if any) that Business Associate maintains a Designated Record Set for Covered Entity, and is notified of such by Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, to the Covered Entity to PHI in a Designated Record Set, so that the Covered Entity may respond to an Individual in order to meet the requirements under 45 CFR 164.524, including any requirements of the HITECH Act, where applicable, where identified as applicable by Covered Entity, including the date (if any) of such

applicability, and where Business Associate agrees to HITECH's applicability.

- (g) To the extent (if any) that Business Associate maintains a Designated Record Set for Covered Entity, and is notified of such by Covered Entity, if an amendment to PHI in a Designated Record Set is required, then the Covered Entity shall instruct the Business Associate to retrieve the record or any other such document identified by Covered Entity in a Designated Record Set so that the Covered Entity may make any such amendment to the PHI as may be required by either the Covered Entity or an Individual.
- (h) Business Associate agrees to make its internal practices, books and records relating solely to the use and disclosure of PHI created or received by Business Associate hereunder, on behalf of Covered Entity, available to the to the Secretary, upon request of the Secretary or the Covered Entity, upon receiving not less than five (5) days advance written notification by the Covered Entity, for the purpose of determining whether Covered Entity is in compliance with relevant HIPAA requirements.
- (i) Where requested by Covered Entity in connection with a specific request from an Individual and consistent with this paragraph, Business Associate agrees to document as set forth below such disclosures of PHI (but only to the extent that Covered Entity has provided Business Associate with sufficient information to know that PHI may reside in the records or other such documents delivered by Covered Entity to Business Associate). Subject to Covered Entity providing Business Associate with sufficient information upon which to make a determination as to the existence of PHI in records or such other documents delivered by Covered Entity to Business Associate, the documentation of such disclosures shall contain such information related to such disclosures as would be required for Covered Entity to respond to the request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and the HITECH Act, where applicable, where identified as applicable by Covered Entity, including the date (if any) of such applicability, and where Business Associate agrees to HITECH's applicability..
- (j) Business Associate agrees to provide to Covered Entity in a time and manner reasonably designated by Covered Entity, information collected in accordance with Section 2(i) of this Business Associate Agreement, to permit the Covered Entity to respond to a specific request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- (k) Business Associate shall not directly or indirectly receive remuneration in exchange for PHI except where permitted by the Agreement and consistent with the HITECH Act.

**3. Obligation of 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.

#### **4. Obligations and Activities of Business Associate Under the HIPAA Security Rule to the Extent Applicable to the Services Provided Under the Agreement**

(a) Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, consistent with the safeguards as implemented and required by the HITECH Act. The term “electronic Protected Health Information” or “Electronic Protected Health Information” has the meaning set forth in 45 Code of Federal Regulations Section 160.103, as amended from time to time and generally means PHI that is transmitted or maintained in any electronic media.

(b) Business Associate will ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it.

(c) Business Associate will report to the Covered Entity any Security Incident (as that term is defined in the HIPAA Security Standards) that results in the unauthorized access, use, disclosure, modification, or destruction of Covered Entity’s electronic Protected Health Information of which it becomes aware.

(d) Business Associate will make Business Associate’s policies and procedures and documentation required by the HIPAA Security Standards related to these Safeguards available to the Secretary of HHS for purposes of determining Covered Entity’s compliance with the HIPAA Security Standards.

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

(a) Term. The Term shall commence as of the Effective Date set forth above, and, in connection with Business Associate’s obligations with respect to the PHI, shall terminate upon the later to occur of (i) the expiration of the Agreement or (ii) when all 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 5.

(b) Termination for Cause. Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within not more than thirty (30) days following Business Associate’s receipt of a written notice from Covered Entity setting forth the details of such material breach, then Covered Entity shall have the right to immediately terminate this Business Associate Agreement and the Agreement identified. Alternatively, if such failure cannot reasonably be cured, Covered Entity may report Business Associate to the HHS Secretary

- (c) Further, upon Business Associate's knowledge of a material breach by Covered Entity, Business Associate shall provide an opportunity for Covered Entity to cure the breach. If Covered Entity does not cure the breach within not more than thirty (30) days following Covered Entity's receipt of a written notice from Business Associate setting forth the details of such material breach, then Business Associate shall have the right to immediately terminate this Business Associate Agreement and the Agreement identified. Alternatively, if such failure cannot reasonably be cured, Business Associate may report Covered Entity to the HHS Secretary
  
- (d) Effect of Termination.
  1. Upon termination of this Business Associate Agreement, for any reason, Business Associate 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 Business Associate Agreement 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.

## 6. Miscellaneous.

- (a) Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule, the Security Rule or the HITECH Act (including any accompanying regulations) means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. The parties agree to negotiate in good faith any amendment to this Business Associate Agreement that may be required from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule or the HITECH Act (including any accompanying regulations). If the parties cannot reach mutual agreement on the terms of any such amendment within sixty (60) days following the date of receipt of any such written request made by Covered Entity to Business Associate, then the Covered Entity shall have the right to terminate this Business Associate Agreement and the Agreement upon providing not less than thirty (30) days' written notice to Business Associate.

- (c) Survival. The respective rights and obligations of Business Associate under Section 5(d) above of this Agreement shall survive the termination of this Agreement.
  
- (d) 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 Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever

**CUSTOMER/Covered Entity:**

**COMPANY/Business Associate**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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