

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between Net Health Systems, Inc. ("Business Associate") and _____ ("Covered Entity") effective as of _____, 20__ ("Effective Date"). This Agreement sets out the responsibilities and obligations of Business Associate as a business associate of Covered Entity under the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act").

RECITALS

A. Business Associate and Covered Entity have entered into a certain Master Agreement(s) ("Master Agreement") under which Business Associate has agreed to provide Covered Entity with certain software and/or related services;

B. Business Associate and Covered Entity have mutual obligations under the Master Agreement that will require Business Associate and Covered Entity to use or disclose Covered Entity's PHI of Individuals as that term is defined under HIPAA; and

C. This Agreement is intended to comply with the rules on handling of PHI under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E ("Privacy Rule"), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C ("Security Rule"), and the HIPAA Breach Notification Regulations, 45 C.F.R. Part 164, Subpart D ("Breach Notification Rule"), so as to permit the Business Associate and Covered Entity to access, use and exchange PHI in a manner which complies with the provisions of HIPAA and the HITECH Act.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Business Associate and Covered Entity agree as follows:

Section 1— Definitions

1.1 Terms Defined in Regulation. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in the Privacy Rule, the Security Rule, and the Breach Notification Rule promulgated pursuant to the HITECH Act, 45 C.F.R. 164.402.

1.2 Electronic Health Record. "Electronic Health Record" shall have the same meaning as the term "electronic health record" in the HITECH Act, section 13400(5).

1.3 Electronic Protected Health Information. "Electronic Protected Health Information" (sometimes "ePHI") shall have the same meaning as the term 'electronic protected health information' in 45 C.F.R. 160.103 limited to the information received from Covered Entity, or created, maintained or transmitted by Business Associate on behalf of Covered Entity.

1.4 Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R.160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

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

Section 2 - Obligations & Activities of Business Associate under the Privacy Rule

2.1 Business Associate agrees to comply with all applicable Use and Disclosure provisions of the Privacy Rule as directed under section 13404 of the HITECH Act. To the extent Business Associate is to carry out an obligation of Covered Entity under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

2.2 Business Associate agrees that any Use or Disclosure of PHI shall comply with the Privacy Rule, as applicable to Business Associate.

2.3 Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement, the Master Agreement, or as Required by Law. Business Associate shall only Use or Disclose only the Minimum Necessary amount of PHI necessary to accomplish the purpose of the Use or Disclosure, in accordance with any current or future guidance issued by the Department of Health and Human Services regarding the "minimum necessary" use or disclosure of PHI. Except as otherwise permitted under HIPAA, Covered Entity shall provide to Business Associate only the Minimum Necessary amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

2.4 Business Associate will comply with the applicable requirements of the HIPAA Security Rule.

2.5 Business Associate agrees to report to Covered Entity's Privacy Official any Use or Disclosure of PHI for purposes other than those permitted by this Agreement and/or the Master Agreement of which it becomes aware.

2.6 Business Associate agrees to ensure that any agent or subcontractor to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to substantially the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.7 To the extent Business Associate maintains PHI in a Designated Record Set that is not duplicative of a Designated Record Set maintained by Covered Entity, Business Associate will make such PHI available to Covered Entity PHI in order for Covered Entity to meet the requirements under 45 C.F.R. 164.524. If an Individual makes a request for access to PHI directly to Business Associate, Business Associate shall notify Covered Entity of such request. Covered Entity will be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and Business Associate will make no such determinations. Only Covered Entity will release PHI to an Individual pursuant to such a request. Business Associate will notify Covered Entity of any request (including subpoenas) that Business Associate receives for access to PHI that is within Business Associate's custody, and Covered Entity will be responsible for providing an appropriate response.

2.8 To the extent Business Associate maintains PHI in a Designated Record Set that is not duplicative of a Designated Record Set maintained by Covered Entity, Business Associate will provide such PHI to Covered Entity for amendment. If an Individual makes a request for amendment directly to Business Associate, Business Associate will forward such request in writing to Covered Entity. Covered Entity shall have the sole responsibility to make decisions regarding whether to approve a request for an amendment to PHI.

2.9 Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, as applicable, for purposes of determining Covered Entity's compliance with HIPAA or the HITECH Act. No attorney-client, accountant-client or other legal privilege will be deemed waived by Business Associate or Covered Entity as a result of compliance with this Section.

2.10 Business Associate agrees to document such disclosures of PHI in its possession and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528. At a minimum the following information regarding the disclosure will be documented: 1) the date of the disclosure; 2) the name of the entity or person who received the PHI, and the address of such entity or person; 3) a brief description of the PHI disclosed; 4) a brief statement regarding the purpose and an explanation of the basis of such disclosure; and 5) the names of the Individuals whose PHI was disclosed.

2.11 Business Associate agrees to provide to Covered Entity, upon written request, information collected in accordance with Section 2.10 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

2.12 To the extent that Covered Entity uses or maintains an Electronic Health Record that discloses any PHI to a third party, and/or to the extent Business Associate's licensed software is deemed to be an Electronic Health Record that discloses any PHI to a third party, Business Associate agrees to cooperate with Covered Entity to ensure that, as of any applicable compliance date, such Electronic Health Record is capable of providing the information required by the then current provisions of the HITECH Act, or any regulations promulgated thereunder, for an accounting of disclosures of PHI through an Electronic Health Record.

Section 3 — Permitted Uses & Disclosures by Business Associate

3.1 General Use and Disclosure Provision. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI obtained from or on behalf of Covered Entity to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement and/or the Master Agreement, provided that such Use or Disclosure complies with HIPAA and the HITECH Act.

3.2 Specific Use and Disclosure Provision.

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

b. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate. Business Associate may Disclose PHI to a third party for such purposes only if: (1) the Disclosure is Required by Law; or (2) Business Associate secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) Use or Disclose the PHI only as Required by Law or for the purposes for which it was Disclosed to the recipient; and (iii) notify the Business Associate of any other Use or Disclosure of PHI.

c. Business Associate may Use or Disclose PHI to perform Data Aggregation as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

d. Business Associate and its subcontractor(s) may also Use and Disclose PHI to create de-identified information consistent with the standard for de-identification of PHI set forth at 45 C.F.R. 164.514. Business Associate and its subcontractor(s) shall be permitted to further Use or Disclose such de-identified information provided that such Use or Disclosure is not prohibited by law. The parties understand that properly de-identified information is not PHI and is not subject to the terms and conditions of this Agreement.

Section 4 - Obligations & Activities of Business Associate under the Security Rule and HITECH Act

4.1 Business Associate will implement and maintain appropriate safeguards to prevent any Use or Disclosure of PHI for purposes other than those permitted by this Agreement or the Master Agreement, including administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any ePHI, if any, that Business Associate receives from Covered Entity or creates, maintains, or transmits on behalf of Covered Entity. Business Associate will comply with the applicable requirements of the HIPAA Security Rule.

4.2 Business Associate agrees to ensure that any agent, including subcontractors, to whom it provides ePHI agree in writing to implement reasonable and appropriate safeguards to protect the ePHI.

4.3 Business Associate agrees to report to Covered Entity any Security Incident involving ePHI of which Business Associate becomes aware in which there is a successful unauthorized access, Use, Disclosure, modification, or destruction of ePHI or interference with system operations in an information system in a manner that risks the confidentiality, integrity, or availability of such information. Notice is hereby deemed provided, and no further notice will be provided, for unsuccessful attempts at such unauthorized access, use, disclosure, modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful login attempts, or interception of encrypted information where the key is not compromised, or any combination of the above.

4.4 Business Associate agrees to notify Covered Entity no later than sixty (60) days following the discovery of a Breach of Unsecured PHI. A Breach is considered "discovered" as of the first day on which the Breach is known to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach. Such notices shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during such Breach.

4.5 Business Associate agrees to make its policies and procedures, and any documentation required under the Security Rule available to the Secretary, within fifteen (15) days or in a time and manner designated by the Secretary, for purposes of the Secretary determining Business Associate's and/or Covered Entity's compliance with the Security Rule.

Section 5 – Obligations & Restrictions of Covered Entity

5.1 Except as Required by Law, Covered Entity shall not include any limitation in the Covered Entity's notice of privacy practices that limits Business Associate's use or disclosure of PHI under the Services agreements.

5.2 Covered Entity warrants that it has obtained and will obtain any consents, authorizations and/or other legal permissions required under HIPAA and other applicable law for the disclosure of PHI to Business Associate. Covered Entity shall notify Business Associate in writing of any changes in, or revocations of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.3 Covered Entity shall not agree to any restriction on the use or disclosure of PHI under 45 CFR § 164.522 that restricts Business Associate's use or disclosure of PHI under the Services agreement unless such restriction is Required by Law.

5.4 Covered Entity shall not request or permit Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done directly by Covered Entity (except for those activities which are permissible for Business Associate to undertake under HIPAA).

Section 6 —Term and Termination

6.1 Term. This Agreement shall become effective on the date the Master Agreement becomes effective, and shall terminate when the Master Agreement terminates.

6.2 Continuation of Agreement. This Agreement supersedes any prior Business Associate Agreement between Covered Entity and Business Associate. This Agreement shall continue after any new Master Agreement is entered into between Covered Entity and Business Associate except to the extent that such other agreement includes business associate agreement provisions or specifically states that it supersedes this Agreement.

6.3 Termination for Cause. Upon a party's knowledge of a material breach by the other party, the non-breaching party shall either:

- a. Provide an opportunity for the other party to cure the breach or end the violation within thirty (30) days of receipt of written notice of such breach or violation, and terminate this Agreement if the other party does not cure the breach or end the violation within such thirty (30) day period or begin taking steps to cure the breach or violation and proceed promptly to completion of such cure; or
- b. Immediately terminate this Agreement if the other party has breached a material term of this Agreement and cure is not possible.

6.4 Effect of Termination.

a. Except as provided in paragraph (b) of this section, upon termination of this 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. Business Associate shall retain no copies of the PHI.

b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, for example, because such information must be retained for compliance with applicable laws, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification of the conditions that make return or destruction infeasible, Business Associate shall extend the protections of this 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.

Section 7 -- Miscellaneous

7.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule or HITECH Act means the relevant section as in effect or as amended.

7.2 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as necessary to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act, and any rules and regulations adopted in the future to provide additional guidance with respect to the above.

7.3 Independent Contractors. None of the provisions of this Agreement shall create or be construed to create any relationship between the parties other than that of independent entities contracting for the sole purpose of effecting the provisions of this Agreement and the Master Agreement. Neither party, nor any of their respective agents or employees, shall be construed to be the agent, employee or representative of the other party.

7.4 No Agency Relationship. Nothing in this Agreement is intended to make either party an agent of the other. Nothing in this Agreement is intended to confer upon Covered Entity the right or authority to direct or control Business Associate's conduct in the course of Business Associate complying with the Agreement or the Master Agreement.

7.5 Survival. The respective rights and obligations of Business Associate under Section 6.4 of this Agreement shall survive the termination of this Agreement.

7.6 No Third Party Beneficiaries. This Agreement is effective only in regard to the rights and obligations of Covered Entity and Business Associate. Covered Entity and Business Associate do not intend this Agreement to create any independent rights in any third party or to make any third-party beneficiary of this Agreement.

7.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Business Associate and Covered Entity to comply with the Privacy Rule, the Security Rule, HIPAA and its rules and

regulations as they may become available or effective, and the HITECH Act and its rules and regulations as they may become available or effective.

7.8 Counterparts and Signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement. Facsimile and electronic signatures shall be deemed to be original signatures for all purposes of this Agreement.

7.9 Choice of Law. The validity, construction and effect of this Agreement will be governed by the laws of the Commonwealth of Pennsylvania without giving effect to that state's conflict of laws rules. Any dispute will be resolved in accordance with the dispute resolution terms in the Master Agreement.

7.10 Relationship to Provisions in Other Agreements. In the event that a provision of this Agreement is contrary to a provision of the Master Agreement or any other agreement or agreements under which Covered Entity discloses PHI to Business Associate, this Agreement shall control in regards to the Use and Disclosure of PHI.

IN WITNESS WHEREOF, the parties have executed and delivered this Business Associate Agreement as of the date set forth in the preamble hereto.

Business Associate:

Net Health Systems, Inc.

Covered Entity:

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____