

HIPAA CONTRACTOR AGREEMENT

This HIPAA Contractor Agreement (this "Agreement") is made as of this ____ day of _____, 20____, (the "Effective Date") by and between:

Company: _____ located at
_____ [Address] ("Covered Entity") and

Independent Contractor: _____ located at
_____ [Address] ("Independent Contractor").

WHEREAS, Independent Contractor, in connection with its services, may maintain, transmit, create or receive data for or from Covered Entity that constitutes Protected Health Information ("PHI");

WHEREAS, Covered Entity is or may be subject to the requirements of the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and related regulations;

WHEREAS, with respect to the foregoing, Independent Contractor is or may be subject to the requirements of HIPAA, HITECH and related regulations;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. Definitions.

a. General. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, SubIndependent Contractor, Unsecured Protected Health Information, and Use.

b. Specific.

i. Independent Contractor. "Independent Contractor" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean _____ [Independent Contractor].

ii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean _____ [Covered Entity].

iii. Electronic Health Record. "Electronic Health Record" shall have the same meaning as the term "electronic health record" in the HITECH Act, Section 13400.



iv. HIPAA. "HIPAA" collectively refers to the HIPAA Statute, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, the HITECH Act, and any associated Regulations, as such may be amended from time to time.

2. Services. Independent Contractor shall provide the following services to Covered Entity (the "Services"):

In addition, Independent Contractor shall perform such other duties and tasks, or changes to the Services, as may be agreed upon by the Parties.

3. Obligations and Activities by Independent Contractor.

a. Independent Contractor agrees to not use or disclose PHI other than as permitted or required by the Agreement or as required by law.

b. Independent Contractor agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.

c. Independent Contractor agrees to report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.

d. In accordance with 45 CFR 164.502(e)(1) and 164.308(b)(2), if applicable, Independent Contractor agrees to ensure that any subIndependent Contractors that create, receive, maintain, or transmit PHI on behalf of the Independent Contractor agree to the same restrictions, conditions, and requirements that apply to the Independent Contractor with respect to such information.

e. In accordance with 45 CFR 164.524, Independent Contractor agrees to make available PHI in a designated record set to the Covered Entity within _____ days of a request by Covered Entity for access to PHI about an individual. In the event that any individual requests access to PHI directly from Independent Contractor, Independent Contractor shall forward such request to Covered Entity within _____ days of receiving such request.

How access requests should be handled (Optional): _____

f. In accordance with 45 CFR 164.526, Independent Contractor agrees to make any amendment(s) to PHI in a designated record within _____ days of a request by Covered Entity. Independent Contractor shall provide such information to Covered Entity for amendment and incorporate any amendments in the PHI as required by 45 CFR 164.526. In the event a request for an amendment is delivered directly to Independent Contractor, Independent Contractor shall forward such request to Covered Entity within _____ days of receiving such request.

How amendments should be handled (Optional): _____



g. Except for disclosures of PHI by Independent Contractor that are excluded from the accounting obligation as set forth in 45 CFR 164.528 or regulations issued pursuant to HITECH, Independent Contractor shall record for each disclosure the information required to be recorded by Covered Entities pursuant to 45 CFR 164.528. Within _____ days of notice by Covered Entity to Independent Contractor that it has received a request for an account of disclosures of PHI, Independent Contractor shall make available to Covered Entity, or if requested by Covered Entity, to the individual, the information required to be maintained pursuant to this Agreement. In the event the request for an accounting is delivered directly to Independent Contractor, Independent Contractor shall forward such request to Covered Entity within _____ days of receiving such request.

How disclosure requests should be handled (Optional): _____

h. To the extent the Independent Contractor is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Independent Contractor agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

i. Independent Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining compliance with HIPAA.

4. Permitted Uses and Disclosures by Independent Contractor.

a. Independent Contractor may use or disclose PHI for the following purposes: (Check one)

As necessary to perform the services as agreed to between the Parties, notwithstanding the restrictions on such uses and disclosures as set forth in HIPAA and this Agreement.

Other: _____

b. Independent Contractor may only de-identify PHI if permitted by Covered Entity and in any event may only de-identify PHI in accordance with 45 CFR 164.514(a)-(c).

c. Independent Contractor may use or disclose PHI as required by law or where Independent Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Independent Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

d. Independent Contractor may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth herein.

5. Permissible Requests by Covered Entity. Except as otherwise permitted by this Agreement, Covered Entity shall not request Independent Contractor to use or disclose PHI in any manner that would



not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

6. Compensation. In consideration for Independent Contractor's performance of the Services, Covered Entity shall pay Independent Contractor: (Check one)

A Periodic Fixed Wage. Covered Entity shall pay Independent Contractor \$_____ (Check one)
 per hour per week per month per year other: _____. Independent Contractor will be paid: (Check one)

Every week. Independent Contractor will be paid on _____ [Day of the week] of every week.

Every month. Independent Contractor will be paid on the _____ [Day of the month] of every month.

After Independent Contractor sends an invoice. Independent Contractor will be paid within _____ days after receiving Independent Contractor's invoice. Independent Contractor will submit invoices for payment (Check one) at the end of every week on the _____ of every month within _____ days after completion of the Services other: _____.

Other: _____

A Set Fee. Covered Entity shall pay Independent Contractor \$_____: (Check one)

After the Independent Contractor completes the services.

Within _____ days after receiving Independent Contractor's invoice. Independent Contractor will submit invoices for payment (Check one) at the end of every week on the _____ of every month within _____ days after the completion of the Services other: _____.

Other: _____

After Completing Certain Milestones. Covered Entity shall pay Independent Contractor according to the following schedule:

· \$_____ for _____ [Milestone description]

· \$_____ for _____ [Milestone description]

Independent Contractor will be paid: (Check one)

After the completion of each milestone.

Within _____ days after receiving Independent Contractor's invoice. Independent Contractor will submit invoices for payment (Check one) at the end of every week on the _____ of the month within _____ days after completion of the Services other: _____.

Other: _____



7. Expenses. (Check one)

Independent Contractor will be reimbursed. Except as otherwise specified in this Agreement, Covered Entity shall reimburse Independent Contractor for all pre-approved, reasonable and necessary costs and expenses incurred in connection with the performance of the Services.

Independent Contractor will NOT be reimbursed. All costs and expenses incurred by Independent Contractor in connection with the performance of the Services shall be the sole responsibility of and paid by Independent Contractor.

8. Term and Termination.

a. Term. Independent Contractor's engagement with Covered Entity under this Agreement shall commence on _____, 20_____.

Termination (Check one)

After all of the Services are completed. The Parties agree and acknowledge that this Agreement and Independent Contractor's engagement with Covered Entity under this Agreement shall terminate upon the completion by Independent Contractor of the Services.

After a fixed period of time. The Parties agree and acknowledge that this Agreement and Independent Contractor's engagement with Covered Entity under this Agreement shall terminate after (Check one)
 _____ days _____ months other: _____.

On a specific date. The Parties agree and acknowledge that this Agreement and Independent Contractor's engagement with Covered Entity under this Agreement shall terminate on _____, 20_____.

At will. Independent Contractor acknowledges and agrees that the engagement with Covered Entity is at will, subject to being terminated at the discretion of Covered Entity at any time, (Check one) without prior notice upon _____ days prior written notice to Independent Contractor. In addition, this Agreement may be terminated by Independent Contractor upon _____ days prior written notice to Covered Entity.

b. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within _____ days written notice. If it is determined by Covered Entity that cure is not possible, Covered Entity may immediately terminate this Agreement. The termination of this Agreement shall automatically terminate the business relationship and any services agreements between the Parties.

c. Obligations of Independent Independent Contractor Upon Termination. Upon termination of this Agreement, Independent Contractor shall either return or destroy all PHI that Independent Contractor still maintains in any form. Independent Contractor shall not retain any copies of such PHI. In the event



Independent Contractor determines that returning or destroying the PHI is infeasible, the terms of this Agreement shall survive termination with respect to such PHI and limit further uses and disclosures of such PHI for so long as Independent Contractor maintains such PHI. Independent Contractor shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI for as long as Independent Contractor retains the PHI. In addition, Independent Contractor shall return all Covered Entity property used in performance of the Services, including but not limited to computers, cell phones, keys, reports and other equipment and documents. Independent Contractor shall reimburse Covered Entity for any Covered Entity property lost or damaged in an amount equal to the market price of such property.

d. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

9. Independent Independent Contractor. The Parties agree and acknowledge that Independent Contractor is an independent Independent Contractor and is not, for any purpose, an employee of Covered Entity. Independent Contractor does not have any authority to enter into agreements or contracts on behalf of Covered Entity, and shall not represent that it possesses any such authority. Independent Contractor shall not be entitled to any of Covered Entity's benefits, including, but not limited to, coverage under medical, dental, retirement or other plans. Covered Entity shall not be obligated to pay worker's compensation insurance, unemployment compensation, social security tax, withholding tax or other taxes or withholdings for or on behalf of the Independent Contractor in connection with the performance of the Services under this Agreement. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of a partnership, a joint venture or any other fiduciary relationship.

10. General Provisions. This agreement sets forth the entire understanding of the Parties. Any amendments must be in writing and signed by both Parties. Any ambiguity in the terms of this Agreement shall be resolved to permit compliance with HIPAA. Any references in this Agreement to a section in HIPAA means the section as in effect or as may be amended. This Agreement may be modified or amended from time to time as is necessary for compliance with the requirements of HIPAA and other applicable law. Amendments must be made in writing and signed by the Parties. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The terms of this Agreement are hereby incorporated into any service or business agreement that may be entered into between the Parties with the intent to form a business relationship. In the event of a conflict of terms between this Agreement and any such service or business agreement the terms of this Agreement shall prevail.

11. Insurance. (Check one)

For the term of this Agreement, Independent Contractor shall obtain and maintain a policy of insurance, with appropriate and adequate coverage and limits, to cover any claims for bodily injury, property damage or other losses which might arise out of any negligent act or omission committed by Independent Contractor or Independent Contractor's employees or agents, if any, in connection with the performance of the Services under this Agreement.



For the term of this Agreement, Independent Contractor is NOT required to obtain and maintain a policy of insurance for injuries or damages.

12. Ownership of Work Product. (Check one)

Covered Entity has ownership. The Parties agree that all work product, information or other materials created and developed by Independent Contractor in connection with the performance of the Services under this Agreement and any resulting intellectual property rights (collectively, the "Work Product") are the sole and exclusive property of Covered Entity. The Parties acknowledge that the Work Product shall, to the extent permitted by law, be considered a "work made for hire" within the definition of Section 101 of the Copyright Act of 1976, as amended, (the "Copyright Act") and that Covered Entity is deemed to be the author and is the owner of all copyright and all other rights therein. If the work product is not deemed to be a "work made for hire" under the Copyright Act, then Independent Contractor hereby assigns to Covered Entity all of Independent Contractor's rights, title and interest in and to the Work Product, including but not limited to all copyrights, publishing rights and rights to use, reproduce and otherwise exploit the Work Product in any and all formats, media, or all channels, whether now known or hereafter created.

Independent Contractor has ownership. The Parties agree that all work product, information or other materials created and developed by Independent Contractor in connection with the performance of the Services under this Agreement and any resulting intellectual property rights (collectively, the "Work Product") are the sole and exclusive property of Independent Contractor. Independent Contractor grants to Covered Entity a limited, non-exclusive license to use the Work Product. The Work Product is to be used only by Covered Entity, and Covered Entity may not assign, transfer, lease or sublicense any Work Product to any person or entity without Independent Contractor's prior written consent.

13. Non-Compete. (INITIAL if you want to include this clause. CROSS OUT if you do not.)

_____ Independent Contractor agrees and covenants that during the term of this Agreement, and for a period of _____ months following the termination of this Agreement, Independent Contractor will not, directly or indirectly, perform or engage in the same or similar activities as were performed for Covered Entity for any business that is directly or indirectly in competition with Covered Entity.

10. Non-Solicit. (INITIAL if you want to include this clause. CROSS OUT if you do not.)

_____ Independent Contractor agrees and covenants that for a period of _____ months following the termination of this Agreement, Independent Contractor will not, directly or indirectly, solicit any officer, director or employee, or any customer, client, supplier or vendor of Covered Entity for the purpose of inducing such party to terminate its relationship with Covered Entity in favor of Independent Contractor or another business directly or indirectly in competition with Covered Entity.

11. Mutual Representations and Warranties. Both Covered Entity and Independent Contractor represent and warrant that each Party has full power, authority and right to execute and deliver this Agreement, has full power and authority to perform its obligations under this Agreement, and has taken



all necessary action to authorize the execution and delivery of this Agreement. No other consents are necessary to enter into or perform this Agreement.

12. Independent Contractor Representation and Warranties. Independent Contractor represents and warrants that it has all the necessary licenses, permits and registrations, if any, required to perform the Services under this Agreement in accordance with applicable federal, state and local laws, rules and regulations and that it will perform the Services according to the Covered Entity's guidelines and specifications and with the standard of care prevailing in the industry.

13. Indemnification. (INITIAL if you want to include this clause. CROSS OUT if you do not.)

_____ The Independent Contractor shall indemnify and hold harmless Covered Entity from any damages, claims, liabilities, loss and expenses, including reasonable attorney's fees, arising out of any act or omission of Independent Contractor in performing the Services or the breach of any provision of this Agreement by Independent Contractor.

14. Governing Law. The terms of this Agreement and the rights of the Parties hereto shall be governed exclusively by the laws of the State of _____, without regarding its conflicts of law provisions.

15. Disputes. Any dispute arising from this Agreement shall be resolved through: (Check one)

Court litigation. Disputes shall be resolved in the courts of the State of _____.

If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

Mediation.

Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

17. Assignment. The interests of Independent Contractor are personal to Independent Contractor and cannot be assigned, transferred or sold without the prior written consent of Covered Entity.

18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect the subject matter hereof, and supersedes all prior negotiations, understandings and agreements of the Parties.



19. Amendments. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by both of the Parties.

20. Notices. Any notice or other communication given or made to either Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice, and shall be deemed given on the date of delivery.

21. Waiver. Neither Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by either Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation.

22. Further Assurances. At the request of one Party, the other Party shall execute and deliver such other documents and take such other actions as may be reasonably necessary to effect the terms of this Agreement.

23. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand to this HIPAA Independent Independent Contractor Agreement as of the date set forth above.

Covered Entity Signature

Covered Entity Full Name

Independent Contractor Signature

Independent Contractor Full Name

