

State of _____

HIPAA SUBCONTRACTOR AGREEMENT

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

Primary Contractor: _____ located at
_____ [Address] ("Primary Contractor") and

Subcontractor: _____ located at
_____ [Address] ("Subcontractor").

Primary Contractor and Subcontractor may each be referred to in this Agreement as a "Party" and collectively as the "Parties."

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

WHEREAS, Primary Contractor 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, Subcontractor 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, Subcontractor, Unsecured Protected Health Information, and Use.

b. Specific.

i. Subcontractor. "Subcontractor" 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 _____ [Subcontractor].

ii. Primary Contractor. "Primary Contractor" 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 _____ [Primary Contractor].



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. Subcontractor shall provide the following services to Primary Contractor (the “Services”):

In addition, Subcontractor 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 Subcontractor.

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

b. Subcontractor 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. Subcontractor agrees to report to Primary Contractor 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, Subcontractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Subcontractor agree to the same restrictions, conditions, and requirements that apply to the Subcontractor with respect to such information.

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

How access requests should be handled (Optional): _____

f. In accordance with 45 CFR 164.526, Subcontractor agrees to make any amendment(s) to PHI in a designated record within _____ days of a request by Primary Contractor. Subcontractor shall provide such information to Primary Contractor 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 Subcontractor, Subcontractor shall forward such request to Primary Contractor within _____ days of receiving such request.

How amendments should be handled (Optional): _____



g. Except for disclosures of PHI by Subcontractor that are excluded from the accounting obligation as set forth in 45 CFR 164.528 or regulations issued pursuant to HITECH, Subcontractor 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 Primary Contractor to Subcontractor that it has received a request for an account of disclosures of PHI, Subcontractor shall make available to Primary Contractor, or if requested by Primary Contractor, 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 Subcontractor, Subcontractor shall forward such request to Primary Contractor within _____ days of receiving such request.

How disclosure requests should be handled (Optional): _____

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

i. Subcontractor 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 Subcontractor.

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

c. Subcontractor may use or disclose PHI as required by law or where Subcontractor 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 Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.

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

5. Permissible Requests by Primary Contractor. Except as otherwise permitted by this Agreement, Primary Contractor shall not request Subcontractor to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Primary Contractor.



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

- A Periodic Fixed Wage. Primary Contractor shall pay Subcontractor \$ _____ (Check one) per hour per week per month per year other: _____. Subcontractor will be paid: (Check one) Every week. Subcontractor will be paid on _____ [Day of the week] of every week. Every month. Subcontractor will be paid on the _____ [Day of the month] of every month. After Subcontractor sends an invoice. Subcontractor will be paid within _____ days after receiving Subcontractor's invoice. Subcontractor 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. Primary Contractor shall pay Subcontractor \$ _____ : (Check one) After the Subcontractor completes the services. Within _____ days after receiving Subcontractor's invoice. Subcontractor 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. Primary Contractor shall pay Subcontractor according to the following schedule:

\$ _____ for _____ [Milestone description]
\$ _____ for _____ [Milestone description]

- Subcontractor will be paid: (Check one) After the completion of each milestone. Within _____ days after receiving Subcontractor's invoice. Subcontractor 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. _____

Compliance with Prevailing Wage Laws. In the event this Agreement pertains to a public works project subject to prevailing wage laws, the Subcontractor shall comply with all applicable federal, state, and local prevailing wage requirements. The Subcontractor shall be responsible for maintaining accurate payroll records as required by law and providing any necessary certifications or documentation to the Primary Contractor or relevant authorities.

7. Expenses. (Check one)

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



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

8. Term and Termination.

a. Subcontractor's engagement with Primary Contractor 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 Subcontractor's engagement with Primary Contractor under this Agreement shall terminate upon the completion by Subcontractor of the Services.

After a fixed period of time. The Parties agree and acknowledge that this Agreement and Subcontractor's engagement with Primary Contractor under this Agreement shall terminate after (Check one)

_____ days _____ months other: _____.

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

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

At the time of termination, the Subcontractor agrees to return all Primary Contractor property used in performance of the Services, including but not limited to computers, cell phones, keys, reports and other equipment and documents. Subcontractor shall reimburse Primary Contractor for any Primary Contractor property lost or damaged in an amount equal to the market price of such property.

b. Termination for Cause. Subcontractor authorizes termination of this Agreement by Primary Contractor, if Primary Contractor determines Subcontractor has violated a material term of the Agreement and Subcontractor has not cured the breach or ended the violation within _____ days written notice. If it is determined by Primary Contractor that cure is not possible, Primary Contractor 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 Subcontractor Upon Termination. Upon termination of this Agreement, Subcontractor shall either return or destroy all PHI that Subcontractor still maintains in any form. Subcontractor shall not retain any copies of such PHI. In the event Subcontractor 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 Subcontractor maintains such PHI. Subcontractor 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 Subcontractor retains the PHI. In addition, Subcontractor shall return all Primary Contractor property used in performance of the Services, including but not limited to computers, cell phones, keys, reports and other equipment and documents. Subcontractor shall reimburse Primary Contractor for any Primary Contractor property lost or damaged in an amount equal to the market price of such property.



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

9.. Independent Contractor. The Parties agree and acknowledge that Subcontractor is an independent contractor and is not, for any purpose, an employee of Primary Contractor. Subcontractor does not have any authority to enter into agreements or contracts on behalf of Primary Contractor, and shall not represent that it possesses any such authority. Subcontractor shall not be entitled to any of Primary Contractor's benefits, including, but not limited to, coverage under medical, dental, retirement or other plans. Primary Contractor 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 Subcontractor 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. Ownership of Work Product. (Check one)

Primary Contractor has ownership. The Parties agree that all work product, information or other materials created and developed by Subcontractor 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 Primary Contractor. 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 Primary Contractor 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 Subcontractor hereby assigns to Primary Contractor all of Subcontractor'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.

Subcontractor has ownership. The Parties agree that all work product, information or other materials created and developed by Subcontractor 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 Subcontractor. Subcontractor grants to Primary Contractor a limited, non-exclusive license to use the Work Product. The Work Product is to be used only by Primary Contractor, and Primary



Contractor may not assign, transfer, lease or sublicense any Work Product to any person or entity without Subcontractor's prior written consent.

8. **Insurance.** (Check one)

For the term of this Agreement, Subcontractor 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 Subcontractor or Subcontractor's employees or agents, if any, in connection with the performance of the Services under this Agreement.

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

Insurance Requirements. The Subcontractor shall, at its own expense, obtain and maintain the following types and amounts of insurance coverage for the duration of this Agreement: (a) Commercial General Liability Insurance with a minimum limit of \$ *[insert amount in numbers]* (*insert amount in words*) per occurrence, (b) Workers' Compensation Insurance in accordance with applicable state law, and (c) any other insurance required by law or reasonably requested by the Primary Contractor. The Subcontractor shall provide the Primary Contractor with certificates of insurance as evidence of the required coverages.

9. **Lien Rights and Procedures.** The Subcontractor shall have the right to file a mechanic's or materialman's lien on the property where the Services are performed in accordance with applicable state and local lien laws if the Subcontractor does not receive payment for the Services provided under this Agreement. The Subcontractor shall provide the Primary Contractor with all necessary notices required by law and shall comply with all statutory procedures for perfecting and enforcing such lien rights. The Primary Contractor shall have the right to contest the validity or amount of any lien filed by the Subcontractor.

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

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

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

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

12. **Mutual Representations and Warranties.** Both Primary Contractor and Subcontractor 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.



13. **Subcontractor Representation and Warranties.** Subcontractor 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 Primary Contractor's guidelines and specifications and with the standard of care prevailing in the industry.

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

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

15. **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.

16. **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.

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

18. **Assignment.** The interests of Subcontractor are personal to Subcontractor and cannot be assigned, transferred or sold without the prior written consent of Primary Contractor.

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

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

21. **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.



22. **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.

23. **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.

24. **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, this Agreement has been executed and delivered as of the date first written above.

Primary Contractor Signature

Primary Contractor Full Name

Subcontractor Signature

Subcontractor Full Name

