



Service Agreement

Vendor name and address: CyraCom, LLC (“Vendor”): 5780 North Swan Road Tucson, AZ 85718	Client name and address: _____ (“Client”) _____ _____ Additional Client facilities listed on Exhibit F if applicable (with the above address, collectively, “Facilities”)
Services:	Exhibit (Exhibit attached hereto if box is checked): <input checked="" type="checkbox"/> A: Over-the-Phone interpretation/OPI <input checked="" type="checkbox"/> A -1: ClearLink® Telephones <input checked="" type="checkbox"/> E: Video Remote Interpretation/VRI <input checked="" type="checkbox"/> H: BAA

Introduction. In consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Formation.** This Service Agreement (“Agreement”) is formed between Vendor and Client.
- Services.** Pursuant to the terms of this Agreement, Vendor shall provide the Services to Client and to the Facilities.
- Payment.** Client will be invoiced by Vendor and shall remit payment to Vendor within thirty (30) days of invoice date. Vendor’s preferred method of payment is by any electronic means, including automated clearing house (ACH) payment or wire, however checks and credit cards are accepted. Any third-party fees incurred by Vendor in the course of receiving or preparing to receive payment from Client, such as a third-party payment processing service, shall be applied to Client’s next invoice, due and payable by Client in accordance with the provisions of this Agreement. Any payment Client fails to remit to Vendor as provided herein shall incur simple interest on all overdue amounts at the rate of one and one-half percent (1.5%) every thirty (30) calendar days.
- Term and Termination.** This Agreement shall commence on the date by which: (i) all Parties have executed this document (“Commencement Date”), and (ii) a copy of the executed document has been delivered to Vendor; and shall terminate three (3) years from the Commencement Date, unless otherwise provided in this Agreement or sooner terminated as provided elsewhere in this Agreement. On the initial termination date, and on each successive anniversary of that date, this Agreement shall renew for one year unless terminated by either party upon written notice of termination to the other party not less than thirty (30) days’ prior to the next date of renewal. The “Termination Date” of this Agreement shall be the sooner of: (i) the date identified by the terminating party in that party’s notice of termination to the other party, or (ii) the date on which Vendor terminates Client’s access to Services. Either party may terminate this Agreement for convenience upon written notice.

4.1 **Survival.** Without limiting other provisions of this Agreement, obligations of the following sections shall survive the termination of this Agreement: 9 (Confidentiality/Prohibited Uses) and 18 (Arbitration).

- Independent Contractor Relationship.** The relationship between the parties is that of independent contractors. Neither party is an agent, partner or employee of the other party, and neither party has any right or any other authority to enter into any contract or undertaking in the name of or for the account of the other party, or to assume or create any obligation of any kind, express or implied, on behalf of the other party, nor will the acts or omissions of either party create any liability for the other party. This Agreement shall in no way constitute or give rise to a partnership or joint venture between the Parties.
- Insurance.** Vendor shall maintain insurance against claims for injury to persons or damage to property that may arise from or relate to Vendor’s performance of Services pursuant to this Agreement. All insurance coverage required by this Agreement shall be procured from and maintained with duly licensed or approved non-admitted insurers in the State of

Arizona with an "A.M. Best" rating of not less than A- VII. Upon Client's written request, Vendor shall furnish Client with copies of certificates of insurance or other forms of verification of coverage, duly signed by an authorized representative of the respective insurer.

6.1. Vendor shall maintain per-occurrence commercial general liability insurance including bodily injury, property damage, personal injury, and broad-form contractual liability coverage of not less than the following amounts:

General Aggregate	\$2,000,000.00
Products – Completed Operations Aggregate	\$2,000,000.00
Each Occurrence	\$1,000,000.00
Damage (Rented Property)	\$1,000,000.00
Medical Expenses	\$10,000.00

6.2. Vendor shall maintain coverage for Errors and Omissions and Workers Compensation of not less than the following amounts:

Errors and Omissions	\$5,000,000.00
Worker's Compensation	\$500,000.00

7. **Limited Liability.** Vendor shall provide Services in a professional and workmanlike manner utilizing translators, interpreters and/or other language professionals with skills and qualifications that meet or exceed the standards of the industry. Client understands and agrees that Services are inherently inexact disciplines and some discrepancies may arise despite Vendor's professional provision of Services. Client releases Vendor from any and all liability, other than liability that cannot be waived by law, for: (i) non-negligent errors made by Vendor in the provision of Services, and (ii) any failure of or interruption to Services due to the failure of any telecommunications facilities, gear, infrastructure, and/or similar equipment beyond Vendor's control. Beyond the limits of its insurance coverage, Vendor shall not be liable to Client for any direct, indirect, punitive, special, incidental or consequential damage of any kind (including loss of business, revenue, profits, use, data or other economic advantage) in connection with or arising out of Client's use of Services or any failure to connect to Services, if applicable, whether in contract or in tort, even if Vendor has been previously advised of the possibility of such damages. The foregoing limitation on Vendor's liability for damages shall apply even if any exclusive remedy provided for in this Agreement fails of its essential purpose.
8. **Background Checks.** Vendor, subject to any federal, state or local laws, rules or regulations which may limit any Vendor action otherwise required by this section, shall make reasonable and legally permitted efforts, including checking background and verifying personal information, to determine that no Vendor employee or independent contractor who shall perform any Services that permit physical, virtual or other access to Client's or its customer's premises, systems, networks or information at any time during the term of the Agreement, has been convicted of any felony or misdemeanor less than ten (10) years prior to becoming Vendor's employee (unless a lesser time period is required by law) involving violence, sexual misconduct, theft or computer crimes, fraud or financial crimes, drug distribution or crimes involving unlawful possession or use of a dangerous weapon. Vendor shall not permit any employee having such a conviction to perform any Services that permit such access during the term of the Agreement, subject to any federal, state or local restrictions on the consideration of criminal convictions in making employment decisions, unless in the sole judgment of Client, said conviction has no reasonable relationship to the employee's fitness or trustworthiness to perform the Services. Vendor shall comply with obligations under this section through the use of a third party service which shall perform a review of applicable records for those counties, states and federal court districts in which a proposed Vendor employee has identified as having resided, worked or attended school in the searched time period. Notwithstanding any of the foregoing, exceptions for individual Vendor personnel may be granted by Vendor on a case-by-case basis.
9. **Confidentiality/Prohibited Uses.**
- 9.1. **Terms.** Neither party shall disclose the terms of this Agreement to any third party without the written consent of the other party, except: (i) as required by law, court order or governing legal authority, or (ii) for disclosure of the terms of this Agreement to a party's accountants, attorneys or similar representatives who are bound by an equal or greater obligation of confidentiality, or to the representatives of any prospective purchaser of a party who is bound by an equal or greater obligation of confidentiality. This paragraph shall survive indefinitely any termination or expiration of this Agreement.

- 9.2. **Confidential Information.** All information provided to Vendor by Client or its affiliates, subsidiaries or agents that is: (i) labeled as confidential and/or proprietary, or (ii) reasonably identifiable as confidential and/or proprietary is the confidential and/or proprietary information of Client (collectively, "Confidential Information"). Client retains all rights, title and interest in and to all of the Confidential Information provided to Vendor. Vendor agrees that it will only use Confidential Information in connection with its performance of its obligations under this Agreement. Vendor shall take reasonable precautions necessary to safeguard the confidentiality of Confidential Information. Vendor agrees to immediately notify Client in the event of any accidental loss or unauthorized access, use, disclosure or breach by it or any of its employees, agents or other permitted users of any Confidential Information. Vendor shall only disclose Confidential Information in response to the order, requirement or request of a court, administrative agency or other governmental body of competent jurisdiction, and Vendor shall provide prompt notice of such disclosure to Client.
- 9.3. **PHI.** Vendor shall apply safeguards to Personal Health Information ("PHI") in conformity with HIPAA and HITECH requirements.
- 9.4. **Prohibited Uses.** The following uses of Services are prohibited: (i) transmission of any message which constitutes an infringement of any copyright or trademark; (ii) any unauthorized disclosure of a trade secret; (iii) transfer of any information or technology in violation of any applicable law or regulation; (iv) violation of any telecommunications law or regulation regarding the use of telephones in interstate or foreign commerce to transmit obscene, threatening, harassing or other prohibited messages; (v) making libelous or slanderous statement; and (vi) violation of any applicable statute or government rule, ordinance, law, regulation or similar edict. Client shall indemnify and hold harmless Vendor for any liability Vendor incurs arising out of or relating to Client's prohibited use of Services. This indemnity protection shall survive the termination of this Agreement. Without waiving any other remedy available to Vendor at law or in equity, Vendor may terminate this Agreement at any time following Client's prohibited use of Services.
10. **Safe Harbor.** Vendor agrees that it will fully and accurately satisfy its responsibilities, as provider of the Services, under the Safe Harbor Regulations relating to program "fraud and abuse" promulgated under the Social Security Act and Medicare and Medicaid Patient and Program Protection Acts.
11. **Disbarment.** Vendor warrants that it is not disbarred or suspended, proposed for disbarment or declared ineligible for award of contracts by any federal agency.
12. **Cost of Living Increase.** The contracted pricing may be increased at each anniversary of the contract in accordance with the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI).
13. **Solicitation of Personnel.** Neither party shall, directly or indirectly, knowingly solicit, induce, recruit or encourage, or cause another to solicit, induce, recruit or encourage, any person employed or engaged by the other party, whether as an employee or independent contractor, to terminate his or her engagement with the other party during the term of this Agreement and for the one (1) year period following the Termination Date.
14. **Marketing and Publicity.** Without obtaining prior written consent, no party may use the other party's name, trademarks, logos and/or service marks without complying with the other party's requirements for such use.
15. **Remedies.** The remedies in this provision do not replace or otherwise limit the remedies included elsewhere in this Agreement. Vendor may, at its sole and absolute discretion, terminate this Agreement upon Client's breach or within ten (10) days of learning of Client's breach. Any decision by Vendor to forego cancellation upon a breach by Client shall not constitute a waiver of Vendor's right to terminate due to a subsequent breach by Client.
16. **Notices.** All notices and communications must be in writing and will be effective upon receipt. Such notices shall be sent by registered or certified U.S. mail return receipt requested or by a nationally recognized overnight courier service, to the address set forth for such party herein, marked "Attn: Controller".
17. **Entire Agreement.** This Agreement represents the complete agreement of the parties and will supersede any and all other agreements, understandings and representations by and between the parties hereto. The parties agree that this Agreement represents the joint drafting of the parties. By signing below, the parties represent and warrant that neither is relying on any promise, guarantee or other statement not contained in this Agreement.

18. **Governing Law.** The performance of Vendor and Client under this Agreement shall be controlled and governed by the laws of the State of Arizona, excluding conflicts of law provisions. Jurisdiction and venue for any dispute between Vendor and Client concerning this Agreement shall rest exclusively within the state and federal courts of Pima County, Arizona. Each of Vendor and Client hereby waives all defenses of lack of personal jurisdiction and forum non conveniens related thereto.
19. **Arbitration.** The Parties agree that all controversies, disputes and/or claims arising out of or in any way related to the interpretation, validity, construction, performance, breach or termination of this Agreement shall be submitted to final and binding arbitration. The arbitration shall apply Arizona law and shall comply with and be governed by the American Arbitration Association under its Commercial Arbitration Rules. The prevailing party in any such arbitration shall be entitled to an award of attorneys' fees, expert witness fees and reimbursement of all reasonable costs and other fees associated with the arbitration, unless the Parties stipulate otherwise. Judgment on the arbitrator's award may be entered by any court of competent jurisdiction.
20. **Severability.** Should any provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the remainder of this Agreement. Instead, this Agreement will be construed as if it did not contain the illegal or invalid part, and the rights and obligations of the parties shall be construed and enforced accordingly.
21. **Force Majeure:** Notwithstanding any other provision of this Agreement, Vendor shall not be liable in any way for any loss, damage, delay or failure of performance resulting from any cause which is beyond Vendor's reasonable control, including, but not limited to fire, explosion, lightning, power surges or failures, acts of God and acts or omissions of communications carriers (including without limitation local exchange companies).
22. **Counterparts.** This Agreement and any amendments hereto may be executed by the Parties hereto individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Signatures to this Agreement and any amendments hereto transmitted by any electronic means intended to preserve the original graphic and pictorial appearance of a document, shall have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

[EXHIBITS BEGIN ON NEXT PAGE]

EXHIBIT A: OVER-THE-PHONE (OPI) SERVICES

Vendor shall provide Client (and to the Facilities) with over-the-phone interpretation (“OPI”) Services, available twenty-four (24) hours per day each calendar day for the term of this Agreement, for the languages listed below. Vendor shall provide the following features and services at no additional charge to Client: (i) Vendor’s standard training services and materials; (ii) toll-free over-the-phone customer support available twenty-four (24) hours per day each calendar day for the term of this Agreement; (iii) on-line service-usage reporting; (iv) monthly invoices with Vendor’s standard granular usage details; and (v) such additional PIN numbers as Client may reasonably request from time to time.

Client may access Vendor OPI Services using Vendor’s telephone interface or Vendor’s ClearLink telephones by entering a valid PIN. If Client is issued 1 800 number(s) for its convenience by Vendor, Vendor shall retain ownership and a right in the 1 800 number(s) and Client agrees that use is limited to Client, its subsidiaries, affiliates or Employees and that Client is responsible for payment for calls made using these 1800 number(s). Client is solely responsible for the security of Client’s PIN cards and preprogrammed ClearLink telephones, as well as for any use of Services arising out of or relating to unauthorized access thereto. If Client discovers or suspects unauthorized use of Client’s PINs, Vendor shall promptly disable any such PIN upon Client’s request and issue a replacement PIN.

Languages: All available Vendor languages

Pricing and Fees*:

Interpretation Service Charges – Billed Monthly

OPI Interpretation	\$ 0.81	Per Minute
Third Party Added to Domestic Call	\$ 0.18	Per Minute
Third Party Added to International Call	Varies by Location	Per Minute

EXHIBIT A-1: CLEARLINK® TELEPHONES

The parties acknowledge and agree that all ClearLink® telephones are and remain the sole property of Vendor.

Client agrees that ClearLink Phones will be kept only at Client’s address above in the Agreement and at the Facilities, or Client shall have waived all rights to ClearLink telephone maintenance and service under this Agreement.

From time to time upon twenty-four (24) hours’ notice to Client, Vendor may, during Client’s regular business hours, enter Client’s premises in which ClearLink telephones are located to inspect and maintain ClearLink telephones.

Client shall not in any way alter ClearLink telephones without prior written approval from Vendor. The parties acknowledge and agree that any alterations to ClearLink telephones become and remain the property of Vendor, at no cost to Vendor and without waiver of Vendor’s other rights or remedies. Client assumes and bears all risk of loss and/or damage to ClearLink telephones, other than normal wear and tear, from the time that any telephones are delivered to Client until such time as Client returns any such telephones to Vendor, as detailed below.

Client shall comply with all applicable laws governing Client’s possession and use of ClearLink telephones.

No later than thirty (30) days after the Termination Date of this Agreement, Client shall deliver to Vendor at Client’s sole expense, in good working order and without alteration, all ClearLink telephones provided to Client by Vendor. For each ClearLink telephone that Client fails to deliver as such, Client shall remit to Vendor \$75.00 USD no later than forty-five (45) days after the Termination Date of this Agreement.

Vendor warrants that ClearLink telephones will be free from defects in materials and workmanship during the term of the Agreement except for ClearLink telephones: (i) that have been altered or modified without the approval of Vendor, (ii) that are used by a person or entity other than Client or other permitted users, and/or (iii) that are used at any time during which any past due invoice hereunder has not been paid in full. In the event of any breach of such warranty, Vendor may, at its option, promptly repair or replace the defective ClearLink telephones. Vendor’s entire liability and Client’s sole and exclusive remedy for damages or loss caused by defect or failure of ClearLink telephones, whether in contract or in tort, including but not limited to negligence, shall be limited to the repair or replacement of ClearLink telephones.

ClearLink® Telephone Charges – Billed Monthly

Cordless ClearLink® Telephones	\$ 5.95 Per Month	Per Telephone, based on assessment of need by Vendor
Standard ClearLink® Telephones	\$ 5.95 Per Month	Per Telephone, based on assessment of need by Vendor

EXHIBIT E: VIDEO REMOTE INTERPRETING (VRI) SERVICES

Vendor shall provide Client with video remote interpretation (“VRI”) Services with any accompanying tablet mobile unit (“TMU”) or cart-mounted real-time video conferencing unit (“VCU”), detailed below. Client may access Vendor VRI Services using Vendor’s interface with Client’s own video equipment, Client’s VCUs or Vendor’s TMUs by entering a valid PIN. Client is solely responsible for the security of Client’s PIN cards as well as for any use of Services arising out of or relating to unauthorized access thereto. If Client discovers or suspects unauthorized use of Client’s PINs, Vendor shall promptly disable any such PIN upon Client’s request and issue a replacement PIN.

TMU(s). Vendor shall provide a successful test of each TMU’s connectivity and Vendor’s standard instruction in the use of the TMU in conjunction with VRI Services. Vendor shall provide reasonable over-the-phone technical support for each TMU at no charge to Client from 9am to 4pm MST (no DST) Monday through Friday, excluding holidays. TMUs are covered under the manufacturer’s warranty, and Vendor does not provide service or repair. Client agrees to pay all shipping costs of TMUs.

VCU(s). Vendor shall provide a successful test of each VCU’s connectivity and Vendor’s standard instruction in the use of the VCU in conjunction with VRI Services. Vendor shall provide reasonable over-the-phone technical support for each VCU at no charge to Client from 9am to 4pm MST (no DST) Monday through Friday excluding holidays. VCUs are covered under the manufacturer’s warranty, and Vendor does not provide service or repair. Client agrees to pay all shipping costs of VCUs.

1. Charges* for VRI:

American Sign Language **\$ 0.95 per minute**

Languages Available 24/7: **\$ 0.81 per minute**

Spanish

Arabic

Russian

Other Languages Available upon Request (subject to availability)

Burmese

Korean

Cantonese

Mandarin

Farsi

Nepali

French

Polish

Haitian Creole

Portuguese & Brazilian Portuguese

Hindi

Somali

Japanese

Vietnamese

Activation Fee per hospital/facility location – First Month Only:

Waived

Vendor reserves the right to update this list from time to time.

BUSINESS ASSOCIATE AGREEMENT

ADA Member

and

CyraCom International, Inc.

This Business Associate Agreement (this "Agreement") effective as of the date both parties have executed this document (the "Effective Date"), is entered into by and between ADA Member and CyraCom International, Inc. ("Business Associate").

WHEREAS, Business Associate will or is currently providing services to ADA Member under one or more existing contracts or agreements, and may enter into future contracts or agreements, with ADA Member (the "Underlying Contracts");

WHEREAS, Business Associate may have access to, create, receive, maintain or transmit Protected Health Information as necessary for Business Associate to perform its obligations under the Underlying Contracts;

WHEREAS, the parties wish to enter into this Business Associate Agreement to govern Business Associate's use and disclosure of the Protected Health Information and implement appropriate safeguards for the security of Electronic Protected Health Information under all of the Underlying Contracts;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements of the parties as set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement:

- 1.1 "Access" shall mean the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource.
- 1.2 "Administrative Safeguards" shall mean administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect Electronic Protected Health Information and to manage the conduct of Business Associate's workforce in relation to the protection of that information.
- 1.3 "Availability" shall mean the property that data or information is accessible and useable upon demand by an authorized person.
- 1.4 "Breach" shall have the meaning given for such term in the Breach Notification Rules.
- 1.5 "Breach Notification Rules" shall mean Section 13402 of HITECH and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time.
- 1.6 "Confidentiality" shall mean the property that data or information is not made available or disclosed to unauthorized persons or processes.
- 1.7 "ADA Member" shall mean the ADA Member entering into this Agreement.
- 1.8 "Electronic Protected Health Information" or "ePHI" shall have the meaning given for the term "electronic protected health information" in 45 CFR 160.103.

- 1.9 "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.
- 1.10 "HIPAA Regulations" shall mean the Rules at 45 C.F.R. parts 160, 162 and 164.
- 1.11 "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- 1.12 "Information System" shall mean an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communication, and people.
- 1.13 "Integrity" shall mean the property that data or information have not been altered or destroyed in an unauthorized manner.
- 1.14 "Protected Health Information" or "PHI" shall mean Individually Identifiable Health Information (transmitted or maintained in any form or medium) that is created, received, maintained or transmitted by Business Associate from or on behalf of ADA Member, and includes Electronic Protected Health Information.
- 1.15 "Physical Safeguards" shall mean physical measures, policies, and procedures to protect the Business Associate's electronic Information Systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 1.16 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.17 "Security Safeguards" shall mean all of the Administrative, Physical, and Technical Safeguards in an Information System.
- 1.18 "Security Incident" shall mean the attempted or successful unauthorized Access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System.
- 1.19 "Technical Safeguards" shall mean the technology and the policy and procedures for its use that protect Electronic Protected Health Information and control Access to it.
- 1.20 "Unsecured PHI" shall have the same meaning given for such term in the Breach Notification Rules.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations or the Breach Notification Rules, as applicable.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1 Business Associate agrees to use and/or disclose the PHI only as permitted or required by this Agreement or as required by law. To the extent Business Associate is to carry out an obligation of ADA Member under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to ADA Member in the performance of such obligation.
- 2.2 Business Associate agrees to comply with applicable requirements of the Security Rule and to use appropriate safeguards to maintain the security of the PHI and to prevent use or disclosure of PHI other than as provided for by this Agreement, which will in no event be any less than the stricter of any applicable HIPAA Regulations or the means which Business Associate uses to protect its own confidential information. Business Associate agrees to implement Security Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of ADA Member and that are in accord with any applicable HIPAA Regulations.
- 2.3 Business Associate agrees to promptly report to ADA Member any use or disclosure of PHI that is not permitted by this Agreement, and any Security Incident, including breaches of unsecured protected health information as required by 45 CFR 164.410, of which Business Associate becomes aware.
- 2.4 Business Associate agrees to ensure that any agent or subcontractor that creates, receives, maintains, transmits, uses, or has access to PHI agrees, in writing, (1) to comply with applicable requirements of the HIPAA Security Rule by entering into a contract that complies with the 45 CFR 164.314 and (2) to the same

- or more stringent restrictions and conditions that apply to Business Associate with respect to such information.
- 2.5 Business Associate agrees to ensure that any agent or subcontractor, to whom it provides ePHI agrees to implement reasonable and appropriate Security Safeguards to protect it.
 - 2.6 Business Associate agrees to document any disclosures of PHI by Business Associate or its agents or subcontractors, and information related to such disclosures, as would be required for ADA Member to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - 2.7 Business Associate agrees to provide to ADA Member information within fifteen (15) days of a request by ADA Member, as necessary to permit ADA Member to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - 2.8 Business Associate agrees to make available PHI within fifteen (15) days of ADA Member's request, to ADA Member or, as directed by ADA Member, to an individual in order to meet the requirements under 45 C.F.R. § 164.524, relating to an individual's right to inspect and obtain a copy of PHI relating to such individual.
 - 2.9 Business Associate agrees to make available Protected Health Information for amendment and incorporate any amendments to protected health information as ADA Member directs or agrees to pursuant to 45 C.F.R. § 164.526 within thirty (30) days of ADA Member's request.
 - 2.10 If Business Associate believes it has a legal obligation to disclose any PHI, it will notify ADA MEMBER as soon as reasonably practical after it learns of such obligation, and in any event at least five (5) business days prior to the proposed release, as to the legal requirement pursuant to which it believes the PHI must be released. If ADA Member objects to the release of such PHI, Business Associate will allow ADA Member to exercise any legal rights or remedies Business Associate might have to object to the release of the PHI, and Business Associate agrees to provide such reasonable assistance to ADA Member, at ADA Member's expense and with ADA Member's agreed indemnification of Business Associate, as ADA Member may reasonably request in connection therewith.
 - 2.11 Business Associate agrees to make its internal practices, policies and procedures, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining ADA Member's compliance with the HIPAA Regulations. Business Associate agrees to provide ADA Member with prompt written notice of any request received from the Secretary for access to such documents.
 - 2.12 Business Associate, at its sole expense, 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 or Business Associate's agent or subcontractor in violation of the requirements of this Agreement.
 - 2.13 Business Associate agrees to report to ADA Member any use or disclosure of PHI not provided for by this Agreement of which it becomes aware as soon as reasonably possible and in any event within five (5) business days of the date on which it becomes aware of the use/disclosure.
 - 2.14 Business Associate acknowledges that Sections 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations, apply to Business Associate in the same manner that such sections apply to covered entities and are incorporated into this Agreement by reference. The additional requirements of HITECH that relate to security and to privacy that apply to covered entities also apply to Business Associate and are incorporated into this Agreement by reference. Business Associate agrees to implement the applicable technical safeguards provided in guidance issued annually by the Secretary for carrying out the obligations under the Code of Federal Regulation sections cited above (in this Section 2.14) and the security standards in Subpart C of Part 164 of Title 45 of the Code of Federal Regulations.
 - 2.15 Business Associate may use and disclose Protected Health Information that Business Associate obtains or creates only if such use or disclosure, respectively, complies with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations. The additional requirements of Subtitle D of HITECH that relate to privacy and that apply to covered entities also apply to Business Associate and are incorporated into this Agreement by reference.

- 2.16 Business Associate acknowledges that Section 164.504(e)(1)(ii) of Title 45, Code of Federal Regulations apply to Business Associate in the same manner that such section applies to covered entities, with respect to compliance with the standards in Sections 164.502(e) and 164.504(e) of Title 45, except that in applying such Section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.
- 2.17 Business Associate shall comply with Section 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time (collectively, the "Breach Notification Rules").
- a. Except as provided in 45 C.F.R. § 164.412, Business Associate will give ADA Member notice of any Breach of Unsecured Protected Health Information without unreasonable delay, but in no case later than thirty (30) days after the first day on which the Breach is discovered by the Business Associate.
 - b. The notice required by Section 2.17.a. above will be written in plain language and will include, to the extent possible or available, the following:
 - i. The identification of the individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach;
 - ii. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
 - iii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - iv. Any steps individuals should take to protect themselves from potential harm that may result from the Breach;
 - v. A brief description of what the Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
 - vi. Contact procedures for individuals to ask questions or learn additional information; including a toll free telephone number, an email address, Web site, or postal address.
- 2.18 Business Associate shall secure all electronic Protected Health Information by a technology standard is consistent with guidance issued by the Secretary, as modified by the Secretary from time to time, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of HITECH.
- 2.19 Business Associate shall require employees and contractors who provide services on behalf of Business Associate to execute appropriate confidentiality or data use agreements.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1 Business Associate may use and disclose PHI only as follows:
- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI as necessary to perform functions, activities, or services for ADA Member as specified in the Underlying Contracts, provided that such use or disclosure would not violate the Privacy Rule if done by ADA Member.
 - b. With respect to permitted uses and disclosures under subsection 3.1.a above, unless otherwise specifically agreed to by the parties, Business Associate will not permit the disclosure of PHI to any person or entity other than such of its employees, agents or subcontractors who must have access to the PHI in order for Business Associate to perform its obligations under an Underlying Contract and who agree to keep such PHI confidential as required by this Agreement.
 - c. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- d. Except as otherwise limited in this Agreement, and after giving ADA Member advance notice as set forth above in Section 2.10, Business Associate may disclose PHI in its possession to a third party for the purpose of its proper management and administration or to fulfill any legal responsibilities of Business Associate, provided that (1) the disclosure is required by law or (2) Business Associate has obtained reasonable written assurances from the person to whom the information is disclosed that it will be held confidentially and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person (i.e., for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate) and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Within fifteen (15) days of a disclosure required by law, Business Associate will notify ADA Member.
 - e. If the Business Associate provides data aggregation services relating to the health care operations ADA Member for ADA Member under the Underlying Contract, Business Associate may use and aggregate the PHI for purposes of providing the data aggregation services to ADA Member. Use of PHI for any other data aggregation is not permitted.
 - f. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, complies with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations.
- 3.2 All other uses or disclosures of PHI not authorized by this Agreement are prohibited.
- 3.3 As between ADA Member and Business Associate, ADA Member holds all right, title and interest in and to the PHI, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to ADA Member, any right, title or interest in or to the PHI or any portion thereof. Except as otherwise specified in this Agreement or agreed to in writing by the parties, Business Associate will have no right to de-identify PHI or to create limited data sets from PHI for its own use or compile and/or distribute statistical analyses and reports utilizing aggregated data derived from the PHI or any other health and medical data obtained from ADA Member.

4. OBLIGATIONS OF ADA MEMBER

ADA Member agrees to timely notify Business Associate of any changes to ADA Member's privacy or security practices and any individual restrictions on the use or disclosure of PHI applicable to or accepted by ADA Member to the extent that such changes or restrictions may impact Business Associate's use and/or disclosure of any PHI.

5. TERM AND TERMINATION

- 5.1 **Term.** This Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as provided in Section 5.2 or until all of the PHI provided by ADA Member to Business Associate, or created or received by Business Associate on behalf of ADA Member, is destroyed or returned to ADA Member.
- 5.2 **Termination For Cause.** In the event ADA Member determines that Business Associate has committed a material breach or violation of any of Business Associate's obligations under this Agreement, including without limitation those arising out of or relating to negligent acts or omissions, or willful misconduct of this Agreement, ADA Member may either: (i) take reasonable steps to cure the breach or end the violation, (ii) provide an opportunity for Business Associate to cure the breach or end the violation, provided that ADA Member may immediately terminate any Underlying Contracts that require the use of PHI or ePHI if Business Associate does not cure the breach or end the violation within a mutually agreed upon time frame; or (iii) immediately terminate any Underlying Contracts that require the use of PHI or ePHI if Business Associate has breached a material term of this Agreement and ADA Member determines in its sole discretion that a cure is not possible.
- 5.3. **Effect of Termination.** Upon the termination, for any reason, of this Agreement or an Underlying Contract that requires the use of PHI by Business Associate, Business Associate will promptly return to ADA Member or, at ADA Member's sole option, destroy any PHI in its possession or control, or in the possession or control of its agents or subcontractors, and will retain no copies of such PHI. Upon ADA Member's request, Business Associate shall certify to ADA Member that all PHI in its possession or control, or in the possession or control of its agents or subcontractors, has been returned or destroyed as required by this Agreement. If Business Associate and ADA Member agree that the destruction or return of the PHI is not

reasonably feasible, Business Associate will extend the protections contained in this Agreement to such PHI and limit any further uses and/or disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Except in the case of non-feasibility or as otherwise agreed to in writing, any right or license that Business Associate has to use the PHI will terminate immediately upon the termination of this Agreement or the Underlying Contract allowing its use.

6. INDEMNIFICATION

Business Associate agrees to promptly indemnify, defend and hold harmless ADA Member, and its employees and agents, against any loss, costs, expenses, suits, demands, judgments, causes of action, claims, damages or liability of any nature ("Claim") arising out of or relating to Business Associate's or agent's or contractor's (a) breach of this Agreement by Business Associate or breach of an agreement with Business Associate by an agent or subcontractor, or (b) negligence or misconduct in the performance of any contractual obligation of Business Associate or any agent or contractor of Business Associate. ADA Member shall furnish to Business Associate prompt written notice of any such Claim of which ADA Member has actual knowledge. ADA Member shall use good faith efforts to furnish Business Associate with reasonable and sufficient authority, information and assistance necessary to defend the Claim.

7. RIGHT TO INJUNCTIVE RELIEF

Business Associate expressly acknowledges and agrees that the breach by it of any provision of this Agreement may cause ADA Member to be irreparably harmed and that ADA Member may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach ADA Member will be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to ADA Member at law or in equity.

8. MISCELLANEOUS

- 8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Regulations, HITECH, or the Breach Notification Rules means the section as in effect or as amended.
- 8.2 Survival. The respective rights and obligations of Business Associate and ADA Member under Section 5.3 and 6 of this Agreement will survive the termination of this Agreement.
- 8.3 Other Confidentiality Obligations. The parties acknowledge that this Agreement is intended to supplement any and all other confidentiality obligations that either party may have under this or any other agreement or applicable law.
- 8.4 Underlying Contracts. The terms of this Agreement will govern the use of PHI under any Underlying Contract. Except as specified herein, all other terms of an Underlying Contract will continue in full force and effect. In the event of any conflict among the provisions of this Agreement and the Underlying Contract, the provisions of this Agreement will control.
- 8.5 Amendment. This Agreement may only be modified, or any rights under it waived, by a written amendment executed by both parties. The parties agree to amend this Agreement from time to time as is necessary for ADA Member to comply with the requirements of the HIPAA Regulations, the Breach Notification Rules, HITECH and any current or future regulations promulgated thereunder.
- 8.6 Interpretation. Any ambiguity in this Agreement will be resolved to permit ADA Member to comply with the HIPAA Regulations, the Breach Notification Rules, HITECH and any current or future regulations promulgated thereunder.
- 8.7 Waiver. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.
- 8.8 Notice. The notice provisions set forth in the Underlying Agreement, if any, shall continue in full force and effect with respect to all other notices arising under the Underlying Agreement.

- 8.9 Binding Effect. The agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.
- 8.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

DRAFT
Final copy will be emailed upon completing the sign-up process.