

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and is effective as of the date of electronic signature ("Effective Date") between **Name of Organization** ("Covered Entity") and the Healthcare Incentives Improvement Institute, Inc. ("Business Associate") (each a "Party" and collectively the "Parties").

BACKGROUND

The Parties are committed to complying with the Privacy Standards for Individually Identifiable Health Information (the "Privacy Rule") and the Security Standards for electronic Protected Health Information ("ePHI") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is created, received, maintained or transmitted by the Business Associate from or on behalf of Covered Entity ("Protected Health Information"), will be handled between the Business Associate and Covered Entity.

ARTICLE I. DEFINITIONS.

Section 1.01 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in 45 CFR 160.103, 164.304 and 164.501.

Section 1.02 Individual. "Individual" has the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Section 1.03 Privacy Rule. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Section 1.04 Protected Health Information. "Protected Health Information" has the meaning as set out in its definition at 45 C.F.R. § 164.501, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of the Covered Entity.

Section 1.05 Required By Law. "Required By Law" has the same meaning as the term "required by law" in 45 CFR 164.501.

Section 1.06 Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or designee.

Section 1.07 Security Incident. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system in which PHI is created, received, maintained or transmitted.

Section 1.08 Security Standards. "Security Standards" means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.

ARTICLE II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Section 2.01 Business Associate will not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law. Business Associate provides certain quality improvement services for or on behalf of Covered Entity for which it seeks access to data and information held by Covered Entity.

Section 2.02 Business Associate will use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as allowed under this Agreement.

Section 2.03 Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

Section 2.04 Business Associate will report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.

Section 2.05 Business Associate will ensure that any third party, including a subcontractor, to whom it provides Protected Health Information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

SECTIONS 2.06 THROUGH 2.10 APPLY ONLY TO THE EXTENT BUSINESS ASSOCIATE CREATES OR MAINTAINS PHI IN DESIGNATED RECORD SETS:

Section 2.06 Business Associate will provide access, at the request of Covered Entity, and in the time and manner agreed upon by Covered Entity and Business Associate, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order for Covered Entity to meet the requirements under 45 CFR 164.524.

Section 2.07 Business Associate will make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner agreed upon by Covered Entity and Business Associate.

Section 2.08 Business Associate will make internal practices, books, and records relating to the use and disclosure of Protected Health Information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity available to the Covered Entity or, at the request of Covered Entity, to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and the Security Standards.

Section 2.09 Business Associate will document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Section 2.10 Business Associate will provide to Covered Entity or an Individual, in a time and manner agreed upon by Covered Entity and Business Associate, information collected in accordance with Section 2.09 of this Agreement, to respond to a request by Covered Entity or an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Section 2.11 Compliance with Security Standards.

2.11.1 Business Associate shall implement administrative, physical and technical safeguards consistent with the Security Standards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

2.11.2 Business Associate shall promptly report to Covered Entity any Security Incident.

ARTICLE III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Section 3.01 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

Section 3.02 Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Section 3.03 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

ARTICLE IV. TERM AND TERMINATION

Section 4.01 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Article IV.

Section 4.02 Termination by Covered Entity. Covered Entity may terminate this Agreement if Covered Entity reasonably determines that Business Associate has breached any provision of this Agreement or otherwise violated the Privacy Standards or the Security Standards. Covered Entity shall provide written notice to Business Associate and an opportunity for Business Associate to cure the breach or end the violation within 10 calendar days of such written notice, unless cure is not possible. If Business Associate fails to cure the breach or end the violation within the specified time period or cure is not possible, Covered Entity shall immediately terminate this Agreement, unless termination is infeasible. Business Associate acknowledges that if cure is not possible and termination of this Agreement is infeasible, as determined in the

sole discretion of the Covered Entity, Covered Entity shall have the right to report the violation to the Secretary.

Section 4.03 Termination by Business Associate. If Business Associate reasonably believes that Covered Entity has breached a material term of this Agreement, Business Associate shall provide thirty (30) days notice of its intention to terminate this Agreement. Business Associate will cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating.

Section 4.04 Effect of Termination. Upon the event of termination pursuant to this Article IV, Business Associate will return or destroy all Protected Health Information pursuant to 45 C.F.R. § 164.504(e)(2)(I), if it is feasible to do so. Prior to doing so, Business Associate will recover any Protected Health Information in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return or destroy the Protected Health Information, Business Associate will notify Covered Entity in writing. Business Associate will extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, Business Associate will require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

ARTICLE V. MISCELLANEOUS

Section 5.01 Survival. The respective rights and obligations of Covered Entity and Business Associate under the provisions of any section that, by its terms, should survive, shall survive termination of this Agreement indefinitely.

Section 5.02 Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

Section 5.03 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

Section 5.04 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

Section 5.05 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

IN WITNESS WHEREOF, the parties have executed this Agreement.

BUSINESS ASSOCIATE

COVERED ENTITY

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____

SAMPLE