

CATHOLIC SOCIAL SERVICES
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (Agreement) is made this ____ day of _____, 20____, between the Catholic Social Services ("CSS"), whose business address is 3710 E. 20th Avenue, Anchorage, AK 99508, and _____ ("Associate") whose business address is _____. This Agreement supplements and is made a part of any contract between CSS and the Associate.

WITNESSETH:

WHEREAS, CSS is subject to certain privacy obligations under the Health Insurance Portability and Accountability Act (HIPAA),

WHEREAS, pursuant to HIPAA and the regulations promulgated thereunder, CSS is required to have a Business Associate Agreement with the Associate,

WHEREAS, the Associate is deemed a Business Associate,

WHEREAS, the Associate will have access to and/or be given Protected Health Information (PHI) to fulfill his/her contractual obligation to CSS,

WHEREAS, the Associate is required to abide by the HIPAA regulations in respect to safeguarding the PHI,

WHEREAS, the Associate assures CSS that it will abide by this Agreement and any other contract,

NOW, THEREFORE, in consideration of the mutual obligations, promises and covenants contained herein, and intending to be legally bound hereby, CSS and the Associate agree as follows:

1. Length of Contract.

The term of this Agreement shall commence as of _____ ("the Effective Date"), and shall expire when all of the Protected Health Information made available or transferred to Associate by CSS is destroyed, rendered inaccessible or returned to CSS.

2. Definitions.

a. Breach: "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the "HIPAA Privacy Rule") and which compromises the security or privacy of the PHI.

b. Business Associate or Associate: "Business Associate" or "Associate" shall mean _____.

c. Covered Entity: "Covered Entity" shall mean Catholic Social Services.

Electronic Protected Health Information: "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.

d. HIPAA: "HIPAA means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

e. HIPAA Privacy Regulations: "HIPAA Privacy Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E.

f. HITECH Standards: "HITECH Standards" means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

g. Individual: "Individual" shall have 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).

h. Individually Identifiable Health Information: "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

i. Privacy Rule: "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

j. Protected Health Information or PHI: "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

k. Required By Law: "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

l. Secretary: "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

3. Use and Disclosure of Protected Health Information.

The parties hereto agree that in order for the Associate to perform his/her duties as expected by CSS, it will be necessary for the Associate to use and disclose Protected Health Information ("PHI"), as such term is defined at 45 CFR §164.501.

3.1 *Permitted and Required Uses and Disclosures of PHI.* Except as otherwise set forth in this Agreement, the parties shall be permitted to use and/or disclose Protected Health Information only for the purpose of conducting the transactions contemplated under this Agreement and only for purposes within the scope of that party's work conducted on behalf of the other party. The parties agree that Associate shall be permitted to use and/or disclose Protected Health Information provided or made available from CSS for the following stated purpose:

3.2 The parties are permitted to disclose Protected Health Information for the proper management and administration of their respective businesses and to carry out their respective legal responsibilities, provided:

A. The disclosure is required by Applicable Law; or

B. The disclosing party obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as required by applicable law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information, and the person will immediately notify the disclosing party of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

3.3 Associate shall be prohibited from using or disclosing the Protected Health Information for any purpose other than as expressly permitted or required by this Agreement.

4. Termination.

4.1 *Termination for Breach.* Pursuant to 45 C.F.R. § 164.504(e)(2)(iii), CSS may terminate this Agreement if CSS determines that the Associate has breached a material term of this Agreement. In the event of a material breach of the Associate's duties and responsibilities contained in Sections 5.1 through and including 5.13 of this Agreement, CSS may immediately terminate this Agreement upon written notice to the Associate. In the event of a claimed material breach of any other provision of this Agreement by the Associate, CSS shall give the Associate written notice of the alleged material breach. The Associate shall have ten (10) days from the date of any written notice of breach to cure the alleged breach. In the event the Associate cures the alleged breach within the ten (10) day time period, this Agreement shall remain in full force and effect. In the event that the Associate fails to cure the alleged breach within the ten (10) day time period, this Agreement shall terminate.

4.2 *Return of PHI On Termination:* Within ten (10) days of termination of this Agreement for any reason, Associate shall return or destroy all PHI received from, or created or received by Associate on behalf of CSS. This provision shall apply to PHI that is in the possession of subcontractors or agents of Associate. Associate shall retain no copies of PHI. In the event that Associate determines that returning or destroying the PHI is infeasible, Associate shall provide to CSS within ten (10) business days, written notification of the conditions that make return or destruction infeasible. Upon such determination, Associate shall extend the protections of this Agreement to such PHI and limit further use or disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Associate maintains such PHI.

5. Duties and Responsibilities of the Associate.

5.1 *Restrictions on Use and Disclosure of PHI.* The Associate shall not use or further disclose any PHI other than as permitted or required by this Agreement, or as required by law.

5.2 *Safeguarding of PHI.* , The Associate shall use appropriate safeguards in accordance with HIPAA and HITECH standards to prevent the use or disclosure of PHI other than as provided for in this Agreement. Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that Associate creates, receives, maintains or transmits on behalf of Covered Entity, as provided for in the Security Rule.

5.3 *Reporting of Unauthorized Use or Disclosure of PHI.* The Associate shall report to CSS in writing within twenty-four hours of discovery any use or disclosure of PHI not provided for by this Agreement of which the Associate becomes aware. Associate further agrees to report immediately and in writing to Covered Entity (a) any security incident as defined by the HIPAA Security Regulations, and (b) any

Breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services at 45 C.F.R. Part 164, Subpart D.

5.4 *Protection of PHI by Agents and Subcontractors.* Before providing disclosing or allowing access to PHI by any agent or subcontractor, Associate agrees to obtain written consent from CSS. After obtaining CSS's prior written consent, the Associate shall ensure that any agents, including any subcontractors, to whom it provides PHI received from, or created or received by the Associate on behalf of CSS agrees to the same restrictions and conditions that apply to the Associate with respect to such PHI, including using only the minimum necessary PHI.

5.5 *Access to PHI.* The Associate shall make available PHI in accordance with 45 CFR §164.524 within ten (10) days after receipt of a request from CSS for access to PHI in the possession of the Associate. The Associate shall make such PHI available to CSS within two (2) days after receipt of a request from an individual for access to PHI in the possession of the Associate. The Associate shall forward all such requests to CSS and agrees that CSS shall be solely responsible for responding to any such requests for access.

5.6 *Amendments to PHI.* Within ten (10) days after receipt of a request from CSS for an amendment to any PHI, the Associate shall make the requested PHI available to CSS for amendment and shall incorporate any such amendments into the PHI in accordance with 45 CFR §164.526. Within two (2) days after receipt of a request from an individual for an amendment to any PHI, the Associate shall forward such request to CSS and agrees that and CSS shall be solely responsible for responding to any such requests for amendments to PHI.

5.7 *Accountings.* Within ten (10) days after receipt of notice from CSS that CSS has received a request from an individual for an accounting of disclosures of PHI regarding the individual during the six (6) years prior to the date on which the accounting was requested, the Associate shall make available to CSS such information as is in the Associate's possession and is required for CSS to provide an accounting of disclosures of PHI to the individual in accordance with 45 CFR § 164.528.

5.8 *Internal Practices, Books, and Records.* The Associate shall make his/her internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Associate on behalf of CSS available to the Secretary of the Department of Health and Human Services for purposes of determining CSS's compliance with Subpart E of Part 164 of Title 45 of the Code of Federal Regulations.

5.9 *Mitigation Procedures:* Associate agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Contract or the DHHS Privacy Regulations

5.10 *Minimum Necessary PHI:* When using or disclosing Protected Information under this Agreement, or when requesting Protected Information from another party for purposes related to this Agreement, Associate shall make reasonable efforts to limit Protected Information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

5.11 *Duties with Regard to PHI Upon Termination of this Agreement.* At termination of this Agreement, if feasible, the Associate shall return or destroy all PHI received from or created or received by the Associate on behalf of CSS that the Associate still maintains in any form and shall retain no copies of such PH I. If such return or destruction is not feasible, the Associate shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible.

5.12 *CSS Consent To Any Disclosure:* Associate agrees that he/she shall not, without prior written consent of CSS, disclose any PHI on the basis that such disclosure is required by law without notifying CSS, so that CSS shall have an opportunity to object to the disclosure as may be required under the applicable regulations.

5.12 *Other Requirements:* If CSS notifies Associate that CSS has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to HIPAA, the HIPAA Privacy Regulations or the HITECH Standards, Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

5.13 *Requests from the Secretary:* Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, and the security of Electronic PHI, available to the Secretary of the United States Department of Health and Human Services ("HHS") for purposes of determining CSS's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards; provided, however, that Associate shall immediately notify CSS upon receipt by Associate of any such request for access by the Secretary of HHS, and shall provide CSS with a copy thereof as well as a copy of all materials disclosed pursuant thereto. Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in fewer than five (5) business days after Associate's receipt of such request, unless otherwise designated by the Secretary.

6. Duties and Responsibilities of CSS.

6.1 *Preparation and Delivery of Accountings.* It shall be the sole responsibility of CSS to prepare and deliver any accounting requested pursuant to 45 CFR §164.528.

6.2 *Decisions Concerning Access to PHI.* In the event that an individual has requested access to PHI directly from the Associate, and the Associate has forwarded such request to CSS in accordance with Section 5.5 of this Agreement, it shall be the sole responsibility of CSS to determine whether to grant or deny such access.

6.3 *Amendment of PHI.* In the event that an individual has requested an amendment to PHI directly from the Associate, and the Associate has forwarded such request to CSS in accordance with Section 5.6 of this Agreement, it shall be the sole responsibility of CSS to determine whether to allow or disallow such amendment.

7. Confidentiality.

The Associate agrees to keep all Protected Health Information received from, or created or received by the Associate on behalf of CSS confidential except as necessary for the Associate to perform its duties pursuant to the terms of this Agreement. The Associate's duty to maintain the confidentiality of Protected Health Information shall continue forever, unless disclosure of such information should be allowed or required by law.

8. No Third Party Beneficiaries.

CSS and the Associate hereby expressly understand and agree that individuals whose PHI is disclosed by CSS to the Associate are not intended to be third party beneficiaries of this Agreement.

9. Independent Associate Status.

The parties hereto expressly agree that in performing its duties under this Agreement, the Associate is acting as an independent Associate (contractor) of CSS. Nothing contained herein is intended, nor shall it be construed to create a joint venture relationship, a partnership, or an employer-employee relationship between the parties.

10. Enforcement.

If either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of the action, including without limitation, reasonable attorneys' fees.

11. Indemnification

Associate shall defend, indemnify and hold harmless CSS, its officers, directors, shareholders and employees from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Associate in connection with the representations, duties and obligations of Associate under this Agreement.

12. Severability.

If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not affect, impair or invalidate the remainder of this Agreement. Further, any ambiguities shall be resolved in a way that permits CSS to comply with the Privacy Rule and the Security Rule.

13. Change of Law.

The parties hereto shall modify any term of this Agreement at anytime if it is determined that the inclusion of any term of this Agreement or the omission of any term from this Agreement violates any federal or state law or regulation, including, without limitation, the Privacy Rule or Security Rule and HIPAA.

14. Survival.

The obligations of Associate set forth herein shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

By: _____
CSS Privacy Officer

By: _____
Associate