

RPC Templates for Business Associate Agreements (BAAs)

This document has BAA templates for three situations, in this order:

1. When RPC is the business associate of a HIPAA covered entity (e.g., a hospital)
2. When RPC is retained by a business associate for a covered entity (e.g., a law firm representing a hospital)
3. When RPC is the contractor and the other party is a subcontractor (e.g., a consulting physician)

HIPAA BUSINESS ASSOCIATE AGREEMENT

**THIS VERSION WOULD BE USED BY RPC WHEN
CONTRACTING DIRECTLY WITH A HEALTHCARE
PROVIDER/ENTITY AND RECEIVING AND/OR CREATING
PHI FROM OR ON BEHALF OF THAT PROVIDER/ENTITY**

This BUSINESS ASSOCIATE AGREEMENT (“Agreement”), is made by and between _____ with an address of _____ (“Covered Entity”) and **RESEARCH & PLANNING CONSULTANTS, LP** (“RPC” or “Business Associate”) located at 6300 La Calma Drive, Suite 170, Austin, Texas 78752 (individually a “**Party**”, and collectively the “**Parties**”) on _____ (“**Effective Date**”) in order to comply with the Health Insurance Portability and Accountability Act of 1996, (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”), regulations promulgated thereunder by the U.S. Department of Health and Human Services, and other applicable federal and state laws.

RECITALS

WHEREAS, RPC provides specific financial and clinical information and reports (“Services”) to Covered Entity; and

WHEREAS, such reports are generated from existing data of Covered Entities; and

WHEREAS, in connection with providing Services, Covered Entity discloses certain Protected Health Information (“**PHI**”) to RPC; and

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”), the Privacy and Security Standards promulgated thereto, and the final Omnibus Rule require that Covered Entity receive adequate assurances that RPC will comply with certain obligations with respect to the privacy and security of PHI received in the course of providing services to or on behalf of Covered Entity; and

WHEREAS, the Parties wish to establish satisfactory assurances that RPC will appropriately safeguard PHI and execute this Agreement as Required by Law; and

WHEREAS, the purpose of this Agreement is to comply with the requirements of HIPAA, the HITECH Act, regulations promulgated thereunder by the U.S. Department of Health and Human Services, and other applicable federal and Texas laws.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy and Security Rules, the HITECH Act and applicable Privacy and Security regulations, and Texas law.

“**Business Associate**” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.

“**Covered Entity or Entities**” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.

“**Data Aggregation**” will have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.501.

“**Designated Record Set**” or “**DRS**” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR §164.501.

“**Electronic Protected Health Information**” or “**ePHI**” shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, and 164, and under HITECH.

“**Health Information Technology for Economic and Clinical Health (“HITECH”) Act**” means Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), 42 U.S.C. Section 3000 *et seq.*, as amended by the Omnibus Final Rule at 78 Fed. Reg. 5566; implementing regulations and Department of Health and Human Services (“HHS”) Guidance.

“**Individual**” shall mean the person who is the subject of PHI under the Privacy Rule, including but not limited to 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g), unless otherwise provided under Texas law.

“**Information**” shall mean any “health information” as defined in 45 CFR Section 160.103.

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E, as amended from time to time.

“**Protected Health Information**” or PHI 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.

“**Required by Law**” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

“**Secretary**” means the Secretary of the Department of Health and Human Services or his or her Designee.

“**Security Rule**” means the HIPAA regulation that is codified at 45 CFR Part 164.

“**Workforce**” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

1. OBLIGATIONS OF RPC

RPC shall:

1.1 Use and Disclose PHI/ePHI. Business Associate agrees not to use or further disclose PHI other than expressly permitted or required by this Business Associate Agreement or the HIPAA Rules or as Required by Law.

1.2 Specific Use or Disclosure Provisions. Except as otherwise limited in this Business Associate Agreement, RPC may use and disclose PHI to properly provide, manage and administer the services required under any underlying Agreement between the parties and consistent with applicable law to assist Covered Entity in its operations, as long as such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, or such use or disclosure is expressly permitted in (a) through (c) below:

(a) RPC may use PHI for the proper management and administration of RPC or to carry out RPC’s legal responsibilities.

(b) RPC may disclose PHI to third parties for the proper management and administration of RPC or to carry out the legal responsibilities of RPC provided that the disclosures are Required by Law, or RPC obtains reasonable assurances from the person to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (C) the person notifies RPC of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) RPC may use PHI to perform Data Aggregation services on behalf of Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

1.3 Reporting. RPC agrees to promptly notify the Covered Entity if RPC has knowledge that PHI has been used or disclosed by RPC in a manner that violates this Business Associate Agreement. To the extent that RPC creates, receives, maintains or transmits Electronic PHI, RPC agrees to report promptly to the Covered Entity any Security Incident, as determined by RPC, involving PHI of which RPC becomes aware. RPC shall comply with 45 CFR §164.402 and shall, following the discovery of a Breach of Unsecured PHI, notify the Covered Entity of such Breach, in accordance with 45 CFR §164.410.

1.4 Safeguards. Use appropriate safeguards, consistent with applicable law, to prevent use or disclosure of PHI in a manner that would violate this Agreement. To the extent that RPC creates, receives, maintains or transmits Electronic PHI, RPC agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Standards, to protect the confidentiality, integrity and availability of the Electronic PHI that RPC creates, receives, maintains or transmits on behalf of Covered Entity.

1.5 Mitigation. RPC agrees to mitigate, to the extent practicable, any harmful effect that is known to RPC of a use or disclosure of PHI by RPC in violation of this Business Associate Agreement or the Consulting Agreement entered into by the parties.

1.6 Disclosure to Agents and Subcontractors of RPC. RPC agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created or received by RPC on behalf of Covered Entity, agrees, in writing, to at least the same restrictions, terms and conditions that apply through this Agreement to RPC with respect to such information, including the requirement that it implement reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 164, to protect any Electronic PHI that is disclosed to it by RPC.

1.7 Access of Individuals to Information. To the extent that RPC maintains a Designated Record Set, RPC shall provide access to Covered Entity to PHI in a Designated Record Set in order to meet the requirements under 45 CFR 164.524. In the event any Individual requests access to PHI directly from RPC, RPC shall forward such request to Covered Entity. Any denial of access to PHI/ePHI shall be determined solely by Covered Entity.

1.8 Audit and Inspection. RPC agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by RPC on behalf of Covered Entity, available to Covered Entity within ten (10) business days, or at the request of Covered Entity or the Secretary, to the Secretary in a time and manner directed by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules. Any release of information regarding RPC's practices, books and records is proprietary to RPC and shall be treated as confidential and shall not be further disclosed without the written permission of RPC, except as necessary to comply with the HIPAA Rules.

1.9 Amendment of Information. Within sixty (60) days of a request by Covered Entity or Individual, RPC agrees to make any appropriate amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526.

1.10 Accounting of Disclosures. Within thirty (30) days of a proper request by Covered Entity, RPC agrees to document and make available to Covered Entity, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, in accordance with 45 CFR §164.528. Within sixty (60) days of proper request by subject Individual, RPC agrees to make available to the Individual the information described above.

1.11 Restrictions on Use or Disclosure. Within fifteen (15) business days of a request of Covered Entity, RPC agrees to consider restrictions on the use or disclosure of PHI agreed to by Covered Entity on behalf of an Individual in accordance with 45 CFR §164.522.

1.12 Privacy of Individually Identifiable Health Information. To the extent RPC is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, RPC agrees to comply with the requirements of subpart E that apply to the Covered Entity in the performance of such obligations.

2. PERMITTED USES AND DISCLOSURES BY RPC AND ITS SUBCONTRACTORS

2.1 Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, RPC (and Subcontractors as applicable) may use or disclose PHI/ePHI to perform functions, activities, or services for, or on behalf of, RPC pursuant to the Consulting Agreement provided such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.

2.2 Use for Management and Administration. Except as otherwise limited in this Agreement, RPC (and Subcontractors as applicable) may use PHI/ePHI for the proper management and administration of RPC (and Subcontractors, as applicable) or to carry out their legal responsibilities.

2.3 Disclosure for Management and Administration. Except as otherwise limited in this Agreement, RPC (and Subcontractor, as applicable) may disclose PHI/ePHI for the proper management and administration of the services to be performed under the Consulting Agreement.

2.4 Minimum Necessary. RPC and its employees, agents, representatives or Subcontractors will limit use or disclosure of use or disclosure PHI/ePHI to the minimum amount of PHI/ePHI necessary to accomplish the purpose of the request, use, or disclosure.

2.5 Data Aggregation. Except as otherwise limited in this Agreement, RPC may use PHI/ePHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B). Unless otherwise limited in this Agreement, RPC may further de-identify PHI/ePHI (in accordance with 45 CFR. §164,514) and use such de-identified data for RPC's own purposes.

2.6 Report Violations of Law. RPC (and Subcontractors as applicable) may use PHI/ePHI to report violations of law appropriate to Federal and State authorities consistent with 45 CFR §164.502(j)(1).

3. OBLIGATIONS OF COVERED ENTITY

3.1 Changes in Permission. Covered Entity shall notify RPC of any restrictions, revocations of, permission by an Individual to use or disclose PHI/ePHI, that an Individual requests on use or disclosure of his/her PHI/ePHI, and that Covered Entity has agreed to in accordance with 45 CFR §164.522; and to the extent that such changes may affect RPC (and Subcontractor's, as applicable) use or disclosure of that Individual's PHI/ePHI. RPC agrees to consider restrictions on the use or disclosure of PHI agreed to by Covered Entity on behalf of the Individual in accordance with 45 CFR §164.522.

3.2 Permissible Requests by Covered Entity. Covered Entity shall not request RPC to, use or disclose PHI/ePHI in any manner that would not be permissible under the Privacy or Security Rule, the HITECH Act or Texas law if done by Covered Entity.

4. TERM AND TERMINATION

4.1 Term and Termination.

(a) Without limiting the termination rights of the parties pursuant to the Consulting Agreement, upon either party's knowledge of a material breach by the other of this Business Associate Agreement, the non-breaching party shall notify the breaching party of such material breach and the breaching party shall have thirty (30) days to cure such material breach. In the event the breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this Business Associate Agreement and the Consulting Agreement or if cure of the material breach is infeasible, report the violation to the Secretary.

(b) To the extent feasible, upon termination of the Consulting Agreement for any reason, RPC shall, and shall cause any subcontractors and agents to, return or destroy and retain no copies of all PHI received from, or created or received by RPC on behalf of, Covered Entity. If RPC determines, in its sole discretion, that return or destruction of such information is not feasible, RPC shall continue to limit the use or disclosure of such information as set forth in this Agreement as if the Consulting Agreement had not been terminated.

5. MISCELLANEOUS

5.1 Regulatory References. A reference in this Agreement to a section in the Privacy and Security Rule or a HITECH Act regulation means the section as in effect or as amended.

5.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the Privacy and Security Rule, the HITECH Act and applicable regulations, and state law.

5.3 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules, the HITECH Act and applicable regulations, and applicable Texas law, where more stringent where more stringent than HIPAA.

5.4 Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

5.5 Assignment. Neither Party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party.

5.6 Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

5.7 Entire Agreement. This Agreement constitutes the complete Agreement between Covered Entity and RPC relating to matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

5.8 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in Travis County Texas.

5.9 Notices. All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the Party to be notified. All communications will be deemed given when received. The addresses of the Parties shall be as follows; or as otherwise designated by any party through notice to the other Party.

If to Provider/Entity:
Name: _____
Address: _____

If to Business Associate:
Research & Planning Consultants, LP
6300 La Calma Drive, Suite 170
Austin, Texas 78752
Attention: Ron Luke, JD, PhD

5.10 Days. All references to the term “days” in this Agreement shall mean business days.

5.11 Nature of Agreement; Independent Contractor. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. The Parties are and shall remain independent contractors to one another, and nothing in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the Parties. This Agreement does not express or imply any commitment to purchase or sell goods or services.

5.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

COVERED ENTITY:

**RESEARCH & PLANNING CONSULTANTS,
LP**

By: _____

By: _____

Printed Name: _____

Printed Name: Ron Luke, JD, PhD

Title: _____

Title: President

Address: _____

Address: _____

**HIPAA SUBCONTRACTOR
BUSINESS ASSOCIATE AGREEMENT**

This Subcontractor Business Associate Agreement (“**Agreement**”), is made by and between _____ with an address of _____, and **Research & Planning Consultants, LP** (“**RPC**”) located at 6300 La Calma Drive, Suite 170, Austin, Texas 78752 (individually a “**Party**”, and collectively the “**Parties**”) on September 11, 2017 (“**Effective Date**”) in order to comply with the Health Insurance Portability and Accountability Act of 1996, (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”), regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable federal and state laws.

RECITALS

WHEREAS, RPC provides specific financial and clinical information and reports (“**Services**”) to _____; and

WHEREAS, such reports are generated from existing data of Covered Entities; and;

WHEREAS, in connection with providing **Services**, Covered Entities disclose certain Protected Health Information (“**PHI**”) to _____ and further discloses such **PHI** to RPC, and

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”), the Privacy and Security Standards promulgated thereto, and the final Omnibus Rule require that Covered Entities receive adequate assurances that Business Associates and their subcontractors comply with certain obligations with respect to the privacy and security of **PHI** received in the course of providing services to or on behalf of Covered Entities; and

WHEREAS, the RPC is a subcontractor to _____, a Business Associate of a Covered Entity and the Parties to this Agreement wish to establish satisfactory assurances that RPC will appropriately safeguard **PHI** and execute this Agreement as mandated by CFR 164.314; and

WHEREAS, the purpose of this Agreement is to comply with the requirements of **HIPAA**, the **HITECH Act**, regulations promulgated thereunder by the U.S. Department of Health and Human Services, and other applicable federal and Texas laws.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy and Security Rules, the HITECH Act.

“**Business Associate**” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.

“**Covered Entity**” or “**Covered Entities**” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.

“**Data Aggregation**” will have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.501.

“**Designated Record Set**” or “**DRS**” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR §164.501.

“**Electronic Protected Health Information**” or “**ePHI**” shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, and 164, and under HITECH.

“**Health Information Technology for Economic and Clinical Health (“HITECH”) Act**” means Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), 42 U.S.C. Section 3000 *et seq.*, as amended by the Omnibus Final Rule at 78 Fed. Reg. 5566, implementing regulations and Department of Health and Human Services (“HHS”) Guidance.

“**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). Individual is bound by the same obligations as Business Associate under this Agreement.

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E, as amended from time to time.

“**Protected Health Information**” or “**PHI**” 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.

“**Required by Law**” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

“**Secretary**” means the Secretary of the Department of Health and Human Services or his or her Designee.

“**Security Rule**” means the HIPAA regulation that is codified at 45 CFR Part 164.

“**Workforce**” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity.

1. OBLIGATIONS AND ACTIVITIES OF RPC.

1.1 Use and Disclosure of PHI/ePHI. RPC agrees not to use or further disclose PHI other than expressly permitted or required by this Sub-Contractor Business Associate Agreement or the HIPAA Rules or as Required by Law.

1.2 Specific Use or Disclosure Provisions. Except as otherwise limited in this Sub-Contractor Business Associate Agreement, RPC may use and disclose PHI to properly provide, manage and administer the services required under any underlying Agreement between the parties and consistent with applicable law to assist Business Associate in its operations, as long as such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, or such use or disclosure is expressly permitted in (a) through (c) below:

(a) RPC may use PHI for the proper management and administration of RPC or to carry out RPC's legal responsibilities.

(b) RPC may disclose PHI to third parties for the proper management and administration of RPC or to carry out the legal responsibilities of RPC provided that the disclosures are Required by Law, or RPC obtains reasonable assurances from the person to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (C) the person notifies RPC of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) RPC may use PHI to perform Data Aggregation services as permitted by 45 CFR §164.504(e)(2)(i)(B).

1.3 Reporting. RPC agrees to promptly notify Business Associate if RPC has knowledge that PHI has been used or disclosed by RPC in a manner that violates this Sub-Contractor Business Associate Agreement. To the extent that RPC creates, receives, maintains or transmits Electronic PHI, RPC agrees to report promptly to the Business Associate any Security Incident, as determined by RPC, involving PHI of which RPC becomes aware. RPC shall comply with 45 CFR §164.402 and shall, following the discovery of a Breach of Unsecured PHI, notify the Business Associate of such Breach, in accordance with 45 CFR §164.410.

1.4 Safeguards. RPC shall use appropriate safeguards, consistent with applicable law, to prevent use or disclosure of PHI in a manner that would violate this Agreement. To the extent that RPC creates, receives, maintains or transmits Electronic PHI, RPC agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Standards, to protect the confidentiality, integrity and availability of the Electronic PHI that RPC creates, receives, maintains or transmits on behalf of Business Associate.

1.5 Mitigation. RPC agrees to mitigate, to the extent practicable, any harmful effect that is known to RPC of a use or disclosure of PHI by RPC in violation of this Sub-Contractor Business Associate Agreement.

1.6 Disclosure to Agents and Subcontractors of RPCs. RPC agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created or received by RPC on behalf of Business Associate, agrees, in writing, to at least the same

restrictions, terms and conditions that apply through this Agreement to RPC with respect to such information, including the requirement that it implement reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 164, to protect any Electronic PHI that is disclosed to it by RPC.

1.7 Access of Individuals to Information. To the extent that RPC maintains a Designated Record Set, RPC shall provide access to PHI in a Designated Record Set to Business Associate to meet the requirements under 45 CFR §164.524.. In the event any Individual requests access to PHI directly from RPC, RPC shall forward such request to Business Associate. Any denial of access to PHI/ePHI shall be determined solely by Covered Entity.

1.8 Internal Practices, Policies and Procedures. RPC shall make available its internal practices, books, and records, including policies and procedures and PHI/ePHI, relating to the use and disclosure of PHI/ePHI received from, or created or received by RPC from Business Associate available to the Secretary for purposes of the Secretary determining Covered Entity's, Business Associate's and RPC's compliance with the Privacy Rule. Any release of information regarding RPC's practices, books and records is proprietary to RPC and shall be treated as confidential and shall not be further disclosed without the written permission of RPC, except as necessary to comply with the HIPAA Rules.

1.9 Amendment of Information. Within sixty (60) days of a request by Business Associate or Individual, RPC agrees to make any appropriate amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526.

1.10 Accounting of Disclosures. Within thirty (30) days of a proper request by Business Associate, RPC agrees to document and make available to Business Associate, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, in accordance with 45 CFR §164.528. Within sixty (60) days of proper request by subject Individual, RPC agrees to make available to the Individual the information described above.

2. PERMITTED USES AND DISCLOSURES BY RPC

2.1 Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, RPC may use or disclose PHI/ePHI to perform functions, activities, or services for, or on behalf of, Business Associate provided such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.

2.2 Use for Management and Administration. Except as otherwise limited in this Agreement, RPC may use PHI/ePHI for the proper management and administration of RPC or to carry out its legal responsibilities.

2.3 Disclosure for Management and Administration. Except as otherwise limited in this Agreement, RPC may disclose PHI/ePHI for the proper management and administration of the services performed under the underlying agreement between the parties.

2.4 Minimum Necessary. RPC and its employees, agents, representatives, and Subcontractors will only request the minimum amount of PHI/ePHI necessary to accomplish the purpose of the request, use, or disclosure.

2.5 Data Aggregation. Except as otherwise limited in this Agreement, RPC may use PHI/ePHI to provide Data Aggregation services to Business Associate as permitted by 45 CFR §164.504(e)(2)(i)(B). Unless otherwise limited in this Agreement, RPC may further de-identify PHI/ePHI (in accordance with 45 CFR. §164,514) and use such de-identified data for RPC's own purposes.

2.6 Report Violations of Law. RPC (and Subcontractors as applicable) may use PHI/ePHI to report violations of law appropriate to Federal and State authorities consistent with 45 CFR §164.502(j)(1).

3. OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Changes in Permission. Business Associate shall notify RPC of any restrictions, revocations of, permission by an Individual to use or disclose PHI/ePHI, that an Individual has requested with respect to use or disclosure of his/her PHI/ePHI, that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such changes may affect RPC's use or disclosure of that Individual's PHI/ePHI. RPC agrees to consider restrictions on the use or disclosure of PHI agreed to by Covered Entity on behalf of the Individual in accordance with 45 CFR §164.522.

3.2 Notification of Restrictions. If RPC learns from Business Associate that any restriction to the use or disclosure of an Individual's PHI/ePHI has been accepted by Covered Entity in accordance with 45 CFR §164.522, RPC shall notify Subcontractors to the extent that such restriction may affect a Subcontractor's use or disclosure of the Individual's PHI/ePHI.

4. TERM AND TERMINATION

4.1 Term and Termination.

(a) Without limiting the termination rights of the parties pursuant to underlying agreement entered into by the parties, upon either party's knowledge of a material breach by the other of this Sub-Contractor Business Associate Agreement, the non-breaching party shall notify the breaching party of such material breach and the breaching party shall have thirty (30) days to cure such material breach. In the event the breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this Sub-Contractor Business Associate Agreement and the underlying agreement entered into between the parties if cure of the material breach is infeasible, report the violation to the Secretary.

(b) To the extent feasible, upon termination of the underlying agreement entered into between the parties for any reason, RPC shall, and shall cause any subcontractors and agents to, return or destroy and retain no copies of all PHI received from, or created or received by RPC on behalf of, Business Associate. If RPC determines, in its sole discretion, that return or destruction of such information is not feasible, RPC shall continue to limit the use or disclosure of such information as set forth

in this Agreement as if the agreement between RPC and Business Associate had not been terminated.

5. MISCELLANEOUS

5.1 Regulatory References. A reference in this Agreement to a section in the Privacy and Security Rule or a HITECH Act regulation means the section as in effect or as amended.

5.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the Privacy and Security Rule, the HITECH Act and applicable regulations, and state law.

5.3 Interpretation. Any ambiguity in this Agreement shall be resolved to permit RPC to comply with the Privacy and Security Rules, the HITECH Act and applicable regulations, and applicable Texas law, where more stringent than HIPAA.

5.4 Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

5.5 Assignment. Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party.

5.6 Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

5.7 Entire Agreement. This Agreement constitutes the complete Agreement between Business Associate to Covered Entity and RPC relating to matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

5.8 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in Travis County, Texas.

5.9 Notices. All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the Party to be notified. All communications will be deemed given when received. The addresses of the Parties shall be as follows; or as otherwise designated by any party through notice to the other Party.

If to Business Associate:
Name: _____
Address: _____

Attention: _____

If to Subcontractor:
Research & Planning Consultants, LP
6300 La Calma Drive, Suite 170
Austin, Texas 78752
Attention: _____

5.10 Days. All references to the term “days” in this Agreement shall mean business days.

5.11 Nature of Agreement; Independent Contractor. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. The Parties are and shall remain an independent contractor, and nothing in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the Parties. This Agreement does not express or imply any commitment to purchase or sell goods or services.

5.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

**RESEARCH & PLANNING
CONSULTANTS, LP**
6300 La Calma Drive, Suite 170
Austin, Texas 78752

(signature)

(signature)

Printed Name: Rose Molina

Printed Name: Ron Luke, JD, PhD

Title: _____

Title: President

Date: _____

Date: _____

**HIPAA DOWNSTREAM SUBCONTRACTOR
BUSINESS ASSOCIATE AGREEMENT**

This DOWNSTREAM SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT (“Subcontractor Agreement”) by and between **Research and Planning Consultants, LLP** (“Business Associate”) and _____ (“Subcontractor”), is entered into on this ____ day of _____, 2020 (“Effective Date”), for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services (“HHS”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the American Recovery and Reinvestment Act of 2009 (“ARRA”), and applicable state law. Business Associate and Subcontractor are individually referred to as the “Party”, and collectively referred to as the “Parties.”

RECITALS

WHEREAS, Business Associate provides Consulting Services and contracts with entities which require Business Associate to enter into Business Associate Agreement to protect the privacy and security of Protected Health Information (“PHI”) provided to Business Associate pursuant to the federal Health Insurance Portability and Accountability of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), the Privacy Standards and Security Standards implemented thereto, the final Omnibus Rule and Texas law; and

WHEREAS, Business Associate is obligated under such Business Associate Agreements to enter into written contracts with subcontractors with whom Business Associate will further disclose such PHI obligating subcontractors to protect the privacy and security of the PHI; and

WHEREAS, Business Associate and Subcontractor have entered into or are entering into a Consulting Agreement or other documented arrangements (the “Consulting Agreement”) pursuant to which Subcontractor may provide products and/or services for Business Associate that require Subcontractor to access, create, and use PHI protected by state and/or Federal law; and

WHEREAS, Business Associate and Subcontractor desire to enter into this Subcontractor Business Associate Agreement;

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

DEFINITIONS

1. For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below. Any other capitalized term not otherwise defined in this Section 1 of this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable.

1.1 “Business Associate” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

1.2 “Covered Entity” means a health care plan, a health care clearinghouse; or a health care provider who transmits any health information in electronic form in connection with a transaction covered under HIPAA. 45 C.F.R. Section 160.105. As used in this Subcontractor Business Associate Agreement, the term “Covered Entity” refers to the entity that provides PHI to Business Associate.

1.3 “Designated Record Set” or “DRS” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 C.F.R. Section 164.501.

1.4 “Downstream Subcontractor” shall mean any subcontractor with whom Subcontractor contracts to provide a service on behalf of Business Associate where Business Associate receives from, or creates on behalf of, Covered Entity PHI and provides that PHI to Subcontractor.

1.5 “Electronic Protected Health Information” or “ePHI” shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, and 164, and under HITECH.

1.6 “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), 42 U.S.C. Section 3000 *et seq.*, and implementation, regulations and guidance.

1.7 “Individual” shall mean the person who is the subject of PHI under the Privacy Rule, including but not limited to 45 C.F.R. Sections 164.501 and 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g), unless otherwise provided under Texas law.

1.8 “Information” shall mean any “health information” as defined in 45 C.F.R. Section 160.103.

1.9 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

1.10 “Protected Health Information” or “PHI” shall have the meaning ascribed to this term in 45 C.F.R. Sections 164.501 and 160.103, and is the information created or received by Business Associate from or on behalf of the Covered Entity.

1.11 “Required by Law” shall have the meaning ascribed to this term in 45 C.F.R. Sections 164.501 and 160.103.

1.12 “Secretary” shall have the meaning ascribed to this term in 45 C.F.R. Section 160.103.

1.13 “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.

1.14 “Security Rule” shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.

1.15 “Subcontractor” shall mean a person (or entity) to which business associate delegates a function, activity, or service, other than in the capacity of a member of the Workforce of such business associate.

1.16 “Workforce” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

2. OBLIGATIONS OF SUBCONTRACTORS

2.1 Use and Disclosure of Protected Health Information

(a) Subcontractor warrants that Subcontractor, its directors, officers, subcontractors, employees, agents, and representatives shall: (a) use or disclose PHI only in connection with fulfilling its duties and obligations under the Consulting Agreement between the Parties; (b) not use or disclose PHI other than as permitted or required by this Subcontractor Agreement or required by law; and (c) not use or disclose PHI in any manner that violates applicable federal and Texas laws or would violate such laws if used or disclosed in such manner by the Covered Entity.

(b) Under no circumstances may Subcontractor sell PHI in violation of the Texas Health and Safety Code, Chapter 181.153, use PHI for marketing purposes, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity or Business Associate. At no time shall Subcontractor sell or use and/or disclose PHI for a marketing purposes without Business Associate first obtaining Covered Entity’s prior written consent.

(c) Subcontractor shall provide adequate training to its employees and subcontractors to ensure compliance with this Agreement, the Privacy Rule, Security Rule, HITECH requirements, the final Omnibus Rule, and state law.

(d) Subcontractor acknowledges that all PHI shall be and remain the sole property of the Covered Entity.

(e) Subcontractor further represents that it will limit use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(f) Subcontractor shall use appropriate safeguards and comply with applicable HIPAA requirements with respect to ePHI, including, without limitation, implementing written policies and procedures in compliance with HIPAA, HITECH, the final Omnibus Rule, and applicable Texas law, conducting a security risk assessment, and training employees who will have access to PHI with respect to such policies and procedures.

(g) To the extent Subcontractor contracts with Business Associate to carry out a Covered Entity obligation under HIPAA, Subcontractor will comply with the requirements of HIPAA that apply to the Covered Entity in the performance of such obligation.

(h) Upon request, Subcontractor shall provide Business Associate with a written list of all subcontractors and the written agreement pertaining to such relationship and shall permit Business Associate to audit Subcontractor to determine compliance with this Agreement.

2.2 Provide Records and Compliance Reports. Subcontractor must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to determine compliance with applicable HIPAA provisions.

2.3 Cooperate with Complaint Investigations and Compliance Reviews. Subcontractor must cooperate with the Secretary, if the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of the Covered Entity, Business Associate and/or Subcontractor to determine compliance with applicable HIPAA provisions.

2.4 Permit Access to Information. Subcontractor must permit access to the Secretary during normal business hours to its facilities, books, records, accounts and other sources of information, including PHI, for ascertaining compliance. If the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, Subcontractor must permit access by the Secretary at any time and without notice. If any information required of Subcontractor is under the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails to furnish the information, Subcontractor must so certify and set forth what efforts it has made to obtain the information. Subcontractor shall provide Business Associate copies of all documents provided to Secretary or other regulatory or accreditation authorities.

2.5 Access of Individuals to Information. To the extent that Subcontractor maintains a Designated Record Set, Subcontractor shall:

(a) To allow the Covered Entity to timely respond to a request by an Individual for access to his/her PHI pursuant to 45 C.F.R. Section 164.524, upon written request by Business Associate for access to PHI about an Individual contained in a Designated Record Set, Subcontractor shall forward a copy of the Individual's PHI (including ePHI) to Business Associate on the same day that Subcontractor receives such requests in order to comply with the terms of this Agreement.

(b) In the event any Individual requests access to PHI directly from Subcontractor, Subcontractor shall forward the Individual's PHI to Business Associate in the Designated Record Set, on the same day as such a request.

(c) Subcontractor shall contractually obligate Downstream Sub-Contractors to forward a request from an Individual to Business Associate on the same day that Downstream Sub-Contractor receives such requests in order to comply with the terms of this Agreement.

(d) Subcontractor shall support Business Associate in a manner that enables Covered Entity to meet its obligations under 45 C.F.R. Section 164.524.

2.6 Amendment of Information. To the extent that Subcontractor maintains a Designated Record Set, Subcontractor shall:

(a) In order for Covered Entity to respond to a request by an Individual for an amendment of PHI pursuant to 45 C.F.R. Section 164.526, Subcontractor shall, within five (5) business days of a written request by Business Associate to amend PHI about an Individual contained in a Designated Record Set, make available to Business Associate such PHI for as long as such information is maintained in the Designated Record Set.

(b) In the event any Individual requests amendment of PHI directly from Subcontractor, Subcontractor shall forward such request to Business Associate within two (2) business days.

(c) Any denial of amendment of PHI pursuant to 45 C.F.R. Section 164.526, and conveyed by Business Associate or Covered Entity to Subcontractor, shall be the sole responsibility of Covered Entity, including resolution or reporting of all appeals and/or complaints arising from denials.

(d) Subcontractor shall support Business Associate in a manner that enables Business Associate and Covered Entity to meet their obligations under 45 C.F.R. Section 164.524.

(e) Within ten (10) business days of receipt of a request from Covered Entity to amend an Individual's PHI in the Designated Record Set communicated to Subcontractor by Business Associate or Covered Entity, Subcontractor shall incorporate the amendment, Individual's statements of disagreement, and/or rebuttals into its Designated Record Set as required by 45 C.F.R. Section 164.526.

2.7 Accounting of Disclosures

(a) To allow Covered Entity to respond to a request by an Individual for an accounting pursuant to 45 C.F.R. Section 164.528, Subcontractor shall, within five (5) business days of a written request by Business Associate or Covered Entity for an accounting of disclosures of PHI about an Individual, make available to Business Associate or Covered Entity, depending on who requested the PHI, such PHI in such format requested by Covered Entity. Subcontractor shall forward a request from an Individual to Business Associate on the same day that Subcontractor receives such requests in order to comply with the terms of this Agreement.

(b) At a minimum, Subcontractor shall provide Business Associate or Covered Entity, depending on who made the request for the PHI, with the following information: (1) the date of the disclosure; (2) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (3) a brief description of the PHI disclosed; and (4) a brief statement of the purpose of such disclosure.

(c) In the event any Individual requests an accounting of disclosure of PHI directly from Subcontractor, Subcontractor shall forward such request to Business Associate Covered within two (2) business days.

(d) Subcontractor shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Subsection 2.4.

(e) Subcontractor shall support Business Associate in a manner that enables Covered Entity to meet the obligations under 45 C.F.R. Section 164.528.

2.8 Survival. The provisions of Section 2 shall survive the termination of this Agreement.

3. DISCLOSURE TO THIRD PARTIES

3.1 Subject to any limitations in this Agreement and the Consulting Agreement, Subcontractor may disclose PHI as necessary to perform its obligations under the Consulting Agreement and as permitted or required by applicable federal or Texas law.

3.2 Subcontractor shall not [and shall provide that its directors, officers, employees, agents and representatives, do not] disclose PHI to any other person (other than members of their respective Workforce as specified in Subsection 3.3 of this Section), unless disclosure is required by law or authorized by the person whose PHI is to be disclosed. Subcontractor shall enter into a signed written agreement with any of its Downstream Subcontractor(s) who will create or receive PHI provided to Subcontractor by Business Associate that:

(a) Establishes the permitted and required uses and disclosures of PHI by the Downstream Subcontractor. The written agreement shall not authorize the Downstream Subcontractor to use or further disclose PHI in a manner that would violate the Privacy Rule, if done by the Business Associate on behalf of the Covered Entity.

(b) Binds the Downstream Subcontractors to the same provisions, restrictions, and conditions of this Agreement pertaining to PHI and e PHI that apply to Subcontract for the express benefit of Covered Entity. Business Associate, Subcontractor, and Downstream Subcontractors shall not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

(c) Requires the Downstream Subcontractors to comply with the applicable requirements of HIPAA (including but not limited to the Security and Privacy Rule as well as more stringent Texas Privacy and Security provisions) and the contractual obligations set forth in this Agreement.

(d) Contains reasonable assurances from Downstream Subcontractor that PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to Subcontractor.

(e) Obligates the Downstream Subcontractor to immediately notify Business Associate of any Breaches (including breaches of unsecured PHI as required by 45 C.F.R. Section 164.410) of the confidentiality of the PHI and Security Incidents of which it becomes aware.

(f) Obligates the Downstream Subcontractor to comply with the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed.

(g) Obligates Downstream Subcontractors to agree to the same responsibilities, restrictions, and conditions that apply to the Business Associate.

(h) To the extent the Downstream Subcontractor is to carry out Covered Entity’s obligations under HIPAA, the Downstream Subcontractor shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of such obligation.

(i) Subcontractor is not in compliance with this Agreement if Subcontractor knows of a pattern of activity or practice of a Downstream Subcontractor that constitutes a material breach or violation of the Downstream Subcontractor’s obligation under the

Consulting Agreement or this Agreement, unless Subcontractor takes reasonable steps to cure the breaches or end the violation, as applicable, and if such steps are unsuccessful, terminate the arrangement or agreement.

(j) Subcontractor is not in compliance with, and shall indemnify Business Associate pursuant to Section 10 of this Agreement if Subcontractor:

- (i) Impermissibly use or disclose PHI;
- (ii) Fails to provide Business Associate timely and accurate Breach notification;
- (iii) Fails to provide timely access to a copy of PHI in a Designated Record Set either Covered Entity or Business Associate, depending on who made the request;
- (iv) Fails to provide a timely and accurate accounting as required in this Agreement;
- (v) Fails to timely disclose PHI where required by the Secretary;
- (vi) Fails to fully comply with Texas law where more stringent than HIPAA, the Security or the Privacy Rule;
- (vii) Fails to fully comply with this Subcontractor Business Associate Agreement.

3.3 Subcontractor shall not disclose PHI to any member of its Workforce and shall contractually obligate its Downstream Subcontractors, agents and representatives not to disclose PHI to any member of their respective Workforce, unless Subcontractor or Downstream Subcontractor, agent or representative has advised such person of their obligations under this Agreement, and of the consequences for of violating them. Subcontractor shall take and shall provide that each Downstream Subcontractor, agent and representative takes appropriate disciplinary action against any member of its respective Workforce who uses or discloses PHI in contravention of this Agreement.

3.4 In addition to Subcontractor's obligations under this Agreement, Subcontractor shall mitigate, to the extent practical and unless otherwise requested by Business Associate or Covered Entity in writing, any harmful effect that is known to Subcontractor and is the result of a use or disclosure of PHI in violation of this Agreement.

4. SAFEGUARDS

4.1 Subcontractor and Downstream Subcontractor shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Subcontractor's operations, to protect the confidentiality of PHI and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of this Agreement. Subcontractor and Downstream Contractor agree to use appropriate administrative, physical and technical safeguards, and comply with the Security Standards, to protect the confidentiality, integrity and availability of the Electronic PHI.

4.2 Subcontractors shall provide Business Associate with a copy of its written information security program upon request.

4.3 Upon reasonable notice and during normal business hours, Business Associate and Covered Entity shall have the right to audit Subcontractor's compliance with its security program and the terms of this Agreement. Subcontractor shall cooperate in such audits and shall provide copies of any documents reasonably requested by Business Associate Covered Entity at no charge.

4.4 Subcontractor acknowledges that the HITECH Act and final Omnibus Rule require Subcontractor and Downstream Subcontractors to comply (in part) with 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314, and 164.316 as if Subcontractor (and Downstream Subcontractors) were a Covered Entity, and Subcontractor agrees that it (and Downstream Subcontractors) through written contract shall comply with these provisions of the Security Standards and all additional security provisions of the Security Rule.

5. REPORTING OF BREACHES AND IMPROPER DISCLOSURES

5.1 Breaches. A breach is the unauthorized acquisition, access, use, or disclosure of PHI in a manner not permitted by HIPAA which compromises the security or privacy of such information.

(a) In the event of a Breach of any "Unsecured Protected Health Information" (i.e., PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 1302(h)(2) of Pub.L. 111-5) that Subcontractor accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Business Associate, Subcontractor shall provide notice of the Breach to Business Associate as soon as possible, immediately, but in no event more than two(2) days after Discovering the Breach. Subcontractor shall be liable and indemnify Covered Entity pursuant to Section 10 for Subcontractor's unreasonable delays in reporting Breaches to Covered Entity.

(b) Notice of a Breach shall include, at a minimum: (i) the identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (ii) the date of the Breach, if known; (iii) the scope of the Breach; (iv) a description of the Business Associate's response to the Breach; and (v) any other reasonable information requested by Business Associate or Covered Entity.

(c) In the event of a Breach, Subcontractor (and Downstream Contractors, as applicable) shall, in consultation with, and at the direction of, Business Associate or Covered Entity's direction, assist in conducting a risk assessment of the Breach, provide notice as required by the final Omnibus Rule and upon approval of Covered Entity or Business Associate, mitigate, to the extent practicable, any harmful effect of such Breach known to Subcontractor. For purposes of this Agreement, a Breach of Unsecured PHI shall be treated as Discovered by Subcontractor as of the first day on which such Breach is known to Subcontractor (including any person, other than the individual committing the Breach, who is an employee, officer, Downstream Subcontractor, or other agent or representative of Subcontractor, as determined in accordance with the federal common law of agency) or should reasonably have been known to Subcontractor following the exercise of reasonable diligence. Subcontractor shall solely incur all costs associated with

public or individual notice efforts (including the costs associated with a Downstream Subcontractor's breach).

(d) In the event of any conflict between this Section 4.1 and Texas law, the more stringent requirements shall govern.

5.2 Improper Disclosures

(a) Subcontractor acknowledges that the HITECH Act requires Subcontractor to comply with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316 as if Subcontractor were a Covered Entity, and Subcontractor agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act.

(b) To the extent feasible, Subcontractors (and Downstream Subcontractors) will use commercially reasonable efforts to secure PHI through technology safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI.

(c) Subcontractor shall track, and shall contractually require Downstream Subcontractors to track, all disclosures of PHI to third parties, including those made to Subcontractor's directors, officers, Downstream Subcontractors, employees, agents, and representatives, other than those disclosures that meet the exception criteria of 45 C.F.R. Section 164.528.

(d) Subcontractor (and Downstream Subcontractors) shall report to Business Associate any, Security Incident, unauthorized, or improper use or disclosure of any PHI under the terms and conditions of this Agreement or applicable federal and state laws (including Breaches of unsecured PHI as required by HIPAA) as soon as practicable, but in no event later than two (2) days of the date on which Subcontractor (or Downstream Subcontractors as applicable) becomes aware of such use or disclosure.

5.3 Breach of System Security. For purposes of this Section 5.3, "Breach of System Security" means an unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data and includes any other definition promulgated by state law.

(a) To the extent Subcontractor owns or licenses computerized data that includes sensitive personal information, Subcontractor shall disclose any breach of system security, after discovering or receiving notification of the breach, Subcontractor shall provide notice of the Breach to Business Associate immediately, but in no event more than two (2) days after discovery. Subcontractor shall be liable for unreasonable delays in reporting to Covered Entity.

(b) In the event of a Breach of System Security, Subcontractor shall, in consultation with Business Associate and Covered Entity and at Business Associate or Covered Entity's direction, assist Covered Entity in conducting a risk assessment of the

Breach of System Security, provide notice as required by Texas law and upon approval of Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach of System Security known to Subcontractor. For purposes of this Agreement, a Breach of System Security shall be treated as discovered by Subcontractor as of the first day on which such breach is known to Subcontractor (including any person, other than the individual committing the breach, who is an employee, officer, agent or representative of Subcontractor, as determined in accordance with the federal common law of agency) or should reasonably have been known to Subcontractor following the exercise of reasonable diligence. Subcontractor shall solely incur all costs associated with mitigation and public, Attorney General, or individual notice efforts.

6. TERM AND TERMINATION

6.1 General Term and Termination. This Agreement shall become effective on the Effective Date set forth above and shall terminate upon the termination or expiration of the Consulting Agreement and when all PHI provided by either Party to the other, or created or received by Subcontractor from Business Associate is, in accordance with Section 8 below, destroyed or returned to Business Associate or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the terms of this Agreement.

6.2 Material Breach

(a) Where Business Associate has knowledge of a material breach by Subcontractor, Business Associate may terminate this Agreement.

(b) At the expense of Subcontractor, Business Associate shall have the right to cure any breach of Subcontractor's obligations under this Agreement. Business Associate shall give Subcontractor notice of its election to cure any such breach, and Subcontractor shall cooperate fully in the efforts by Business Associate to cure Subcontractor's breach. All requests for payment for such services of Business Associate shall be paid within thirty (30) days. For purposes of clarification, Subcontractor acknowledges it is responsible for Subcontractor and Downstream Subcontractor actions and omissions.

7. EQUITABLE REMEDIES

7.1 Subcontractor acknowledges and agrees that Business Associate and Covered Entity will suffer irreparable damage upon Subcontractor's breach of this Agreement, and that such damages shall be difficult to quantify.

7.2 Subcontractor acknowledges and agrees that Business Associate or Covered Entity may file an action for an injunction to enforce the terms of this Agreement against Subcontractor, in addition to any other remedy Business Associate and/or Covered Entity may have. Where Business Associate has knowledge of any material breach by Subcontractor, Business Associate or Covered Entity may take proceedings against Subcontractor before any Court having jurisdiction to obtain an injunction or any legal proceedings to cure or stop such material breach.

8. RETURN/DESTRUCTION OF PROTECTED HEALTH INFORMATION UPON TERMINATION.

Upon termination of this Agreement for any reason, Subcontract shall:

8.1 If feasible, return or destroy all PHI received from, or created or received by Subcontractor on behalf of Business Associate that Subcontractor or any of its directors, officers, Downstream Subcontractors, employees, agents, and representatives still maintain in any form, and shall retain no copies of such information; or

8.2 If Business Associate determines that such return or destruction is not feasible, extend the protections of this Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, in which case Subcontractor's obligations under this Section shall survive the termination of this Agreement.

8.3 Subcontractor agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and ePHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>.

9. AMENDMENT. If any of the rules or regulations promulgated under HIPAA, HITECH, the Final Omnibus Rule, or Texas law are amended or interpreted in a manner that renders this Agreement inconsistent therewith, Business Associate may, on thirty (30) days' written notice to Subcontractor, amend this Agreement to the extent necessary to comply with such amendments or interpretations. Subcontractor agrees that it will fully comply with all such regulations promulgated under HIPAA or state law, and that it will agree to amend this Agreement and to amend applicable Downstream Subcontractor agreements.

10. INDEMNIFICATION. Subcontractor shall indemnify, defend and hold harmless Business Associate and its/his/her directors, officers, subcontractors, employees, agents, and representatives from and against any and all third party liabilities, costs, claims, suits, actions, penalties, proceedings, demands, losses and liabilities of any kind (including court costs and attorneys' fees) brought by a third party, arising from or relating to the acts or omissions of Subcontractor or any of its directors, officers, employees, agents, representatives in connection with Subcontractor's performance under this Agreement or the Consulting Agreement, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement. The indemnification provisions of this Section 10 shall survive the termination of this Agreement.

11. CONFLICTING TERMS. In the event any terms of this Agreement conflict with any terms of the Consulting Agreement, the terms of this Agreement shall govern and control.

12. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Travis County, Texas.

13. NOTICES. All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the Party to be notified. All communications will be deemed given when received. The addresses

of the Parties shall be as follows; or as otherwise designated by any Party through notice to the other Party:

If to Business Associate:

If to Subcontractor:

Attn: _____

Attn: _____

14. DAYS. All references to the term “days” in this Agreement shall mean business days.

15. INDEPENDENT CONTRACTORS. The Parties are and shall be independent contractors to one another, and nothing in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the Parties. Except as expressly provided herein, neither Party shall be liable for any debts, accounts, obligations, or other liabilities of the other Party.

16. ASSIGNMENT. This Agreement shall be binding on the Parties and their successors and assigns, provided that neither Party shall assign any of its rights under this Agreement to any other Party without the prior written consent of the other Party.

17. SEVERABILITY. In the event that any court or any governmental authority or agency declares all or part of any section of this Agreement to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate any other section of this Agreement, and in the event that only a portion of any section is so declared to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate the balance of such section.

18. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement on behalf of the Party and on the date set forth below.

BUSINESS ASSOCIATE:

SUBCONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____