

This HIPAA Business Associate Agreement (“Business Associate Agreement”), effective as of the day of \_\_\_\_\_ 20\_\_, is made by and between \_\_\_\_\_ (“Covered Entity”) and ABILITY Network Inc. (“Business Associate” or “ABILITY”) for the purpose of compliance with the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA”) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”). This Business Associate Agreement hereby amends and is incorporated into any underlying agreement between Covered Entity and ABILITY; to the extent that the provisions of this Business Associate Agreement conflict with those of an underlying agreement, the provisions of this Business Associate Agreement shall control. Terms used but not otherwise defined herein shall have the same meaning as those terms defined in HIPAA.

If, in the provision of services to Covered Entity, ABILITY representatives receive or have access to Protected Health Information (“PHI”) that is created and/or maintained by Covered Entity, ABILITY shall be bound by the terms outlined below. These provisions will not apply to de-identified information:

1. Permitted Uses and Disclosures. ABILITY may use and disclose PHI: (i) in the course of performing services for or on behalf of Covered Entity; (ii) or as required or permitted by law, regulation, regulatory agency or by any accrediting body to whom Covered Entity or ABILITY may be required to disclose such PHI; (iii) as set forth in an authorization that complies with HIPAA and HITECH, or (iv) to provide Data Aggregation services, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

Except as otherwise limited in this Business Associate Agreement, ABILITY may use PHI for the proper management and administration of ABILITY or to carry out the legal responsibilities of ABILITY.

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

Acknowledging that ABILITY may disclose information, including PHI, from its other customers to Covered Entity, ABILITY also may disclose PHI from Covered Entity to its other customers, provided such disclosures comply with HIPAA regulations.

ABILITY will not use or disclose PHI other than as permitted or required by this Business Associate Agreement or as required by law.

2. ABILITY’s Obligations. ABILITY shall:

- a. ensure, through a written contractual agreement that complies with 45 C.F.R. § 164.314, that its agents and subcontractors to whom it may provide PHI agree to the same terms and conditions as are applicable to ABILITY;
- b. implement appropriate and reasonable safeguards to prevent use or disclosure of PHI other than as permitted herein, including those safeguards required pursuant to 45 C.F.R. § 164.308, 164.310, 164.312, 164.314, and 164.316, and comply, as applicable, with the requirements of 45 C.F.R. Part 164, Subpart C;
- c. make available to the Secretary of Health and Human Services, ABILITY’s internal practices, books and records relating to the use or disclosure of PHI for purposes of determining Covered Entity’s compliance with HIPAA;
- d. report to the Covered Entity, and mitigate to the extent practicable, any harmful effect that is known to ABILITY of, uses or disclosures of PHI of which ABILITY becomes aware that do not comply with the terms herein, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware;
- e. to the extent that Covered Entity and ABILITY agree in writing that ABILITY shall maintain PHI as part of a Designated Record Set, ABILITY agrees to provide access to Covered Entity, or to an Individual as directed by Covered Entity, to PHI contained in a Designated Record Set. If an Individual request an electronic copy of PHI maintained electronically in a Designated Record Set, ABILITY agrees to provide access to Covered Entity, or to an Individual as directed by Covered Entity, to PHI in a readable electronic format as agreed to by Covered Entity and the Individual, with respect to the PHI maintained electronically in a Designated Record Set;
- f. make amendments to PHI contained in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526;

- g. document uses and disclosures of PHI that would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and, upon Covered Entity's request, provide such information to Covered Entity;
- h. use Covered Entity's EDI password only as expressly authorized by Covered Entity and only for the submission and retrieval of Covered Entity's EDI transactions. If covered entity uses ABILITY for exchange of EDI transactions with their Medicare contractor, this paragraph grants this explicit authorization;
- i. to the extent ABILITY is to carry out one (1) or more of Covered Entity's obligation(s) under 45 C.F.R. Part 164, Subpart E, ABILITY agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations; and
- j. make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.

3. Covered Entity's Obligations. Covered Entity shall:

- a. notify ABILITY of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect ABILITY's use or disclosure of PHI;
- b. notify ABILITY of any changes in, or revocation of, permission by an individual to use or disclose PHI to the extent that such changes may affect ABILITY's use or disclosure of PHI;
- c. notify ABILITY of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect ABILITY's use or disclosure of PHI; and
- d. request ABILITY to use or disclose PHI only in a manner permissible under HIPAA and HITECH if done by the Covered Entity.

4. Term and Termination. The term of this Business Associate Agreement shall be effective as of the date set forth above and shall terminate when all of the PHI provided by Covered Entity to ABILITY, or created or received by ABILITY on behalf of Covered Entity, is destroyed or, if it is infeasible to destroy the PHI, when protections are extended to such information, as provided herein. Covered Entity may terminate this Business Associate Agreement if ABILITY fails to cure or take substantial steps to cure a material breach of this Business Associate Agreement within thirty (30) days after receiving written notice of such material breach from Covered Entity. If the underlying agreement terminates or expires, ABILITY will maintain Covered Entity's PHI for sixty (60) days in order for Covered Entity to resubmit claims as necessary. Covered Entity's PHI will then be destroyed by ABILITY. If such destruction of PHI is not feasible, ABILITY will continue to abide by the terms set forth herein with respect to such PHI and further uses and disclosures of such PHI will be limited to those purposes that make destruction infeasible. This Section 4 shall survive the termination of this Business Associate Agreement.

5. Agreement. This Business Associate Agreement constitutes the entire agreement between the parties concerning its subject matter. This Business Associate Agreement may be amended only in writing signed by Covered Entity and ABILITY. The parties agree to take such action to amend this Business Associate Agreement as is necessary to comply with the requirements of HIPAA and HITECH. This Business Associate Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Minnesota, including all matters of construction, validity and performance. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA and HITECH, as applicable.

Covered Entity

ABILITY Network Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_