

# BUSINESS ASSOCIATE AGREEMENT

This agreement for Protection of Information (“Agreement”) is entered into as of \_\_\_\_\_ between \_\_\_\_\_ (“Covered Entity”) located at \_\_\_\_\_ and Caregiver Management Systems, Inc. (“Business Associate”) located at 1111 North Plaza Drive, Suite 430, Schaumburg, Illinois 60173.

## RECITALS:

WHEREAS, Business Associate provides services to Covered Entity through which Business Associate may have access to Individually Identifiable Health Information, as hereafter defined, maintained by Covered Entity that is protected as confidential under the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as set forth at 45 CFR Parts 160 and 164 (the “Privacy Rule”); and

WHEREAS, Covered Entity is required by the Privacy Rule to enter into this Agreement and keep this Agreement in full force and effect in order to disclose or grant access to Individually Identifiable Information maintained by Covered Entity; and

WHEREAS, this Agreement is intended to comply with the provisions of 45 CFR § 164.504(e).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I.** **DEFINITIONS**

1.1 Individual. “Individual” means the person who is the subject of protected health information and includes a person who qualifies as a personal representative under 45 CFR § 164.502(g).

1.2 Individually Identifiable Health Information. “Individually Identifiable Health Information” is information, including demographic information collected from an individual, whether oral or recorded in any form or medium, that is:

1.2.1 created or received by a health care provider, health plan, employer or health care clearinghouse; and

1.2.2 relates to the past, present, or future health or condition, whether physical or mental, 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

1.2.3 identifies the individual or there is a reasonable basis to believe the information could be used to identify the individual.

1.3 Protected Health Information. “Protected Health Information” means Individually Identifiable Health Information that is maintained or transmitted in any medium.

1.4 Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and Part 164, Subparts A and E.

1.5 Secretary. “Secretary” means the Secretary of the U. S. Department of Health and Human Services or his designee.

## **ARTICLE II.** **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

2.1 Permitted Uses. Business Associate may use or disclose Protected Health Information to the extent necessary to perform a Medicare Benefit Evaluation for Covered Entity, and for Business Associate’s own proper management and administration, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Business Associate will not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law or regulation.

2.2 Appropriate Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.

2.3 Limitation on Use. If Business Associate uses or discloses Protected Health Information, it will do so only in the minimum amount and to the minimum number of individuals necessary to perform its obligations to Covered Entity.

2.4 Mitigation of Harm. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is know to Business Associate of a use or disclosure of Protected Health Information made in violation of this Agreement.

2.5 Report of Breach. Business Associate will report to Covered Entity if Business Associate becomes aware of any use or disclosure of Protected Health Information not provided for by this Agreement, or of any security incident.

2.6 Agents/Subcontractors. Business Associate will require any agent or subcontractor to whom it provides Protected Health Information to agree to the same restrictions and conditions that apply through this Agreement to Business Associate.

2.7 Availability of Books and Records to Secretary. Business Associate will make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary in a timely manner as required by the Secretary to determine Covered Entity’s compliance with the Privacy Rule.

2.8 Access to Protected Health Information. Business Associate will provide access to Protected Health Information in accordance with the Privacy Rule.

2.9 Amendment to Protected Health Information. Business Associate will make Protected Health Information available for amendment and incorporate any amendments in accordance with the Privacy Rule.

2.10 Accounting of Protected Health Information. Business Associate will document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures under the Privacy Rule. Business Associate will provide to Covered Entity or an Individual in a timely manner information collected to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures.

### **ARTICLE III.** **OBLIGATIONS OF COVERED ENTITY**

3.1 Permitted Disclosures. Covered Entity will disclose Protected Health Information upon Business Associate's request, or upon the request of a third party if such disclosure is permitted by law, so that Business Associate may provide services to Covered Entity, unless Covered Entity otherwise objects to the disclosure, or Business Associate is no longer providing services to Covered Entity. Covered Entity agrees that it will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

3.2 Privacy Notice. Covered Entity will notify Business Associate of any limitation(s) in its notice of privacy practices, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

3.3 Individual Revocations. Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

3.4 Special Restrictions. Covered Entity will notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

### **ARTICLE IV.** **TERM AND TERMINATION**

4.1 Term. This agreement shall commence as of the effective date of the Privacy Rule and will continue in effect unless terminated by either party.

4.2 Termination. This Agreement will terminate when all of the Protected Health Information provided by the Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

4.3 Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity will

4.3.1 provide an opportunity for Business Associate to cure the breach;

4.3.2 immediately terminate this agreement if cure is not possible; or

4.3.3 if neither termination nor cure is feasible, report the violation to the Secretary.

4.4 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate will return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **ARTICLE V. MISCELLANEOUS**

5.1 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. To be effective, all amendments and additions to this Agreement must be in writing and signed by the parties.

5.2 Interpretation. Any ambiguity in this agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

5.3 Entire Agreement. The Agreement, as amended from time to time pursuant to Paragraph 5.1, constitutes the entire agreement and understanding between the parties and supersedes all prior oral or written agreements with respect to the subject matter hereof.

5.4 Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

5.5 Notices. Any notice which may be or is required to be given under this Agreement shall be in writing and sent by first class mail, fax, courier or as an electronic record attached to an e-mail. All notices shall be effective upon receipt.

5.6 Headings. Headings are for convenience only and form no part of the Agreement and shall not affect its interpretation.

5.7 Governing Law. This agreement will be governed by and construed in accordance with the laws of the State of \_\_\_\_\_ without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

\_\_\_\_\_  
Name of Covered Entity

BY: \_\_\_\_\_  
Full Name of Officer, Director or Agent of Facility

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

**CAREGIVER MANAGEMENT SYSTEMS, INC.**

BY: \_\_\_\_\_  
Full Name of Officer, Director or Representative

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