

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made as by and between City of Niagara Falls ("Covered Entity") and RDS Services LLC ("Business Associate").

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements, and may in the future become parties to additional agreements (collectively, the "Underlying Agreements"), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable Protected Health Information relating to covered persons of Covered Entity that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as such law and regulations may be amended from time to time (collectively, "HIPAA"); and

WHEREAS, by reason of such activities, the parties believe that Business Associate is a "business associate" of Covered Entity, as such term is defined in 45 CFR 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the parties agree as follows:

### 1. Definitions.

#### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

- a. "Business Associate" shall generally have the same meaning as the "business associate" at 45 CFR 160.103.
- b. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.
- c. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.
- d. "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).

- e. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- f. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 CFR Parts 160, 162 and 164.
- g. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- h. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- i. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

2. Obligations and Activities of Business Associate

- a. Business Associate shall not use or disclose Protected Health Information except for the purpose of performing Business Associate's obligations under the Underlying Agreement and as permitted under the Underlying Agreement and this Agreement or as Required by Law. Further, Business Associate shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule, HIPAA Rules, or other applicable federal or state law if so used by Covered Entity, except that Business Associate may use Protected Health Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes involving one or more Affiliate Entity (as defined herein) of Covered Entity for the Health Care Operations of Covered Entity. For purposes of this Agreement, "Affiliate Entity" shall mean an individual or corporation, partnership or other legal entity that controls, is controlled by or under common control with Covered Entity.

Business Associate shall not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth herein.

- b. Business Associate shall implement appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent the use or disclosure of Protected Health Information other than as permitted by the Underlying Agreement or this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities.

- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or any security incident of which it becomes aware involving Protected Health Information of the Covered Entity, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware within a reasonable time of becoming aware of such use or disclosure (but no later than 24 hours thereafter), in accordance with the notice provisions set forth herein. Business Associate shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- e. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent, including a subcontractor, whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate shall sign an agreement with such agents or subcontractors containing substantially the same provisions as this Agreement and further identifying Covered Entity as a third party beneficiary with rights of enforcement and indemnification from such agents or subcontractors in the event of any violation of such agreement. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions.
- f. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. In the event that any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity. A denial of access to required Protected Health Information shall not be made without the prior written consent of Covered Entity.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. If any Individual requests an amendment of Protected Health Information directly from Business Associate, Business Associate must notify Covered Entity in writing within 5 days of the request. A denial of amendment of Protected Health Information maintained by Business Associate or its agents or subcontractors shall not be made without the prior written consent of Covered Entity.

- h. Within 10 days of notice by Covered Entity of a request for an accounting of disclosures of Protected Health Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an account of disclosures to enable Covered Entity to fulfill its obligations under Section 164.528 of the Privacy Rule. In accordance with the Privacy Rule, Business Associate shall not include in such accounting those disclosures made: (i) to carry out treatment, payment or health care operations, as provided in Section 164.502 of the Privacy Rule; (ii) to individuals of Protected Health Information about them as provided in Section 164.502 of the Privacy Rule; (iii) pursuant to an authorization as provided in Section 164.508 of the Privacy Rule; (iv) to persons involved in the individual's care or other notification purposes as provided in Section 164.510 of the Privacy Rule; (v) for national security or intelligence purposes as provided in Section 164.512(k)(2) of the Privacy Rule; or (vi) to correctional institutions or law enforcement officials as provided in Section 164.512(k)(5) of the Privacy Rule. Business Associate agrees to implement a process that allows for an accounting of disclosures of Protected Health Information to be collected and maintained by Business Associate and its agents or subcontractors. In addition, Business Associate agrees that upon request by Covered Entity, Business Associate shall provide to Covered Entity an accounting of all such disclosures. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis of the disclosure or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall, within five days of a request, forward it to Covered Entity in writing. It shall be Business Associate's responsibility to prepare, and Covered Entity's responsibility to deliver, any such accounting requested. Business Associate shall not disclose any Protected Health Information, except in accordance with this Agreement.
- i. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy & Security Rules. Notwithstanding the foregoing, no attorney-client, accountant-client or other legal privilege shall be deemed waived by Covered Entity or Business Associate by virtue of this section. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documents by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any Protected Health Information that Business Associate provides to the Secretary concurrently with providing such Protected Health Information to the Secretary.

3. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall only, request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.
4. **Data Ownership.** Business Associate acknowledges and agrees that Business Associate has no ownership rights with respect to the Protected Health Information.
5. **Audits, Inspection and Enforcement.** Within 10 days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct an inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Health Information pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.
6. **Term and Termination.**
  - a. **Term.** The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall terminate when all of the Protected Health Information provided by 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.
  - b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with the opportunity to cure the breach within a specified number of days as set forth in the notice by Covered Entity or, if no cure takes place within the time period specified by the Covered Entity terminate the Underlying Agreement, or (2) terminate the Underlying Agreement immediately.
  - c. **Effect of Termination.**
    - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement or the Underlying Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received by 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.

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- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of Protected Health Information infeasible. In the event that return or destruction of 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.
- (d) Effective Date. The effective date of this Agreement shall be the effective date of the Underlying Agreement.

7. Indemnity. Business Associate agrees to indemnify and hold harmless Covered Entity and its affiliates, and their respective officers, directors, employees and agents from and against any and all liability, loss, fines, penalties, damage, claims or causes of action and expenses associated therewith (including, but not limited to, court costs and reasonable attorney fees) caused directly or indirectly by Business Associate's breach of its obligations under this Agreement. Covered Entity may enforce Business Associate's obligations hereunder by seeking equitable relief, without bond, which remedy shall be nonexclusive.

8. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with applicable changes in law. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security and confidentiality of Protected Health Information. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Health Information. Upon request from Covered Entity, Business Associate agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. Covered Entity may terminate the Underlying Agreement upon 30 days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of Protected Health Information that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

9. **Litigation Assistance.** Except when it would constitute a direct conflict of interest for Business Associate, Business Associate will make itself available to reasonably assist Covered Entity in any administrative or judicial proceeding.
10. **Regulatory References.** Any reference in this Agreement to federal or state law means the section that is in effect or as amended.
11. **Choice of Law.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Michigan. Any suit or proceeding arising out of or related to this Agreement shall be commenced and maintained only in a court of competent jurisdiction in the state or federal courts located in Milwaukee County, Michigan. RDS and Plan Sponsor irrevocably consent to submit to the exclusive jurisdiction of such courts.
12. **No Private Right of Action Created.** This Agreement does not create any right of action or benefits for individuals whose Protected Health Information is disclosed in violation of HIPAA or other law or regulation relating to security or privacy for such Protected Health Information.

IN WITNESS WHEREOF, the parties have executed this Agreement by duly authorized representatives of each party.

COMPANY NAME

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

COMPANY NAME

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
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