

**AGREEMENT FOR HIPAA BUSINESS ASSOCIATE**

BY AND BETWEEN the BOARD OF COUNTY COMMISSIONERS, PASCO COUNTY, FL., a political subdivision of the state of Florida (hereinafter, the COVERED ENTITY) and

NCSPlus Incorporated \_\_\_\_\_, whose

business address is 117 East 24th Street, NYC 10010 (hereinafter the BUSINESS ASSOCIATE).

WHEREAS, the COVERED ENTITY and the BUSINESS ASSOCIATE share health information that is deemed confidential under the Health Insurance Portability and Accountability Act (HIPAA); and

WHEREAS, it is the intent of both parties to comply to the fullest extent possible to the confidentiality requirements under HIPAA; and

WHEREAS, this agreement sets forth the terms and conditions pursuant to which protected health information that is provided by, or created or received by the Business Associate from or on behalf of Covered Entity will be handled.

NOW THEREFORE, the parties do hereby agree as follows:

1. **Definitions:**

- a. **Individual** The term "Individual" shall have the same meaning as the term "individual" in the Privacy Rule and shall include a person who qualifies as a personal representative in accordance with the Privacy Rule.
- b. **Privacy Rule** The phrase "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, as amended from time to time.
- c. **Protected Health Information** "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.
- d. **Designated Record Set** The phrase "Designated Record Set" shall have the same meaning as the phrase "designated record set" as set forth within the Privacy Rule, as may be amended from time to time.
- e. **Required By Law** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501 and shall also include the confidentiality requirements under Florida law.

- f. Secretary "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

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

2. **Purpose**

This Agreement sets forth the terms and conditions pursuant to which PHI that is held, transmitted, disclosed, received or created by Business Associate from and on behalf of Covered Entity will be handled. Except as otherwise specified herein, Business Associate may make all uses and disclosures of PHI necessary to perform its obligations to the Covered Entity under any written agreement with the Business Associate or pursuant to the Covered Entity's written instruction, provided that such use or disclosure would not violate the Privacy Rule. All other uses and disclosures not required by law, authorized by this Agreement or authorized by any other written agreement with Covered Entity or Covered Entity's written instructions are prohibited.

3. **Obligations and Activities of Business Associate**

- a. Business Associate shall not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate shall implement and maintain safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate shall 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 shall report to the Covered Entity any use or disclosure of the Protected Health Information not permitted for by this Agreement made by the Business Associate, its employees, agent or subcontractor of which it becomes aware within ten (10) days of the Business Associate's discovery of such unauthorized use and/or disclosure.
- e. Business Associate shall require that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity shall execute a written agreement that agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such Health Information.
- f. Business Associate shall, to the extent Covered Entity determines that any Health Information constitutes a "designated record set" under the Privacy Regulations, (a) make the Health Information specified by Covered Entity available to Covered Entity or to the individual(s) identified by Covered Entity as being entitled to access and

copy that Health Information, and (b) make any amendments to Health Information that are requested by Covered Entity. Business Associate shall provide such access and make such amendments within the time and in the manner specified by Covered Entity.

- g. Business Associate shall 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, upon the written request of the Covered Entity in a timely manner.
- h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and/or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner required by the Covered Entity in writing or designated by the Secretary, within ten (10) days of the request for purposes of the Covered Entity determining Covered Entity's compliance with the Privacy Rule.
- i. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Health Information made by Business Associate or its employees, agents, representatives or subcontractors as required by the Privacy Regulations. For each Disclosure that requires an accounting under this Section 2.8, Business Associate shall track the information required by the Privacy Regulations, and shall securely maintain the information for six (6) years from the date of the Disclosure.
- j. Business Associate agrees to provide to Covered Entity or an Individual, in a timely manner, information collected in accordance with Section 3 of this Agreement, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. Within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual to amend the Individual's PHI or to account for disclosures of the Individual's PHI in accordance with the provisions detailing the "Designated Record Set" in the Privacy Rule in accordance with Section 7 of this Agreement.
- k. Unless Business Associate has an independent right to PHI received from, or created or received by Business Associate on behalf of Covered Entity. Upon termination of this Agreement, Business Associate shall return to Covered Entity or destroy, as requested by Covered Entity, all PHI in accordance with Section 8 of this Agreement.
- l. Notwithstanding anything to the contrary in the Underlying Agreement(s), at Business Associate's expense, Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, directors, officers, subcontractors or agents (the "Indemnities") against all damages, losses,

lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) and all liability to third parties arising from any breach of this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents or other members of Business Associate's workforce. Business Associate's obligation to indemnify the Indemnitees shall survive the expiration or termination of this Agreement for any reason.

4. **Permitted Uses and Disclosures by Business Associate**

General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified herein **INSERT ACTIVITIES OR SERVICES TO BE PERFORMED AND/OR NAME AND DATE OF MAIN CONTRACT**, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

5. **Obligations of the Covered Entity**

- a. The Covered Entity will provide the Business Associate a copy of its Privacy Practices and Restrictions.
- b. The Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- c. The Covered Entity shall 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 the Covered Entity. [This provision shall not apply if the Business Associate will use or disclose protected health information for, and the contract between the parties includes provisions for, data aggregation or management and administrative activities of Business Associate].
- d. Handling of "Designated Record Sets" – In the event that a PHI received or created by Business Associate on behalf of Covered Entity constitutes a "Designated Record Set," as defined in the Privacy Rule:
  - a. Business Associate agrees to make any amendments to PHI that Covered Entity directs pursuant to Privacy Rule at the request of Covered Entity or the individual and the time and manner designated by Covered Entity.
  - b. Covered Entity agrees to:
    - (i) Notify Business Associate, in writing, of any PHI Covered Entity that seeks to make available to an Individual pursuant to the Privacy Rule and the time and manner in which Business Associate shall provide

- such access; and
- (ii) Notify Business Associate, in writing, of any amendments to PHI in the possession of Business Associate shall make and the time and manner in which such amendments shall be made.

6. **Term** The Term of this Agreement shall be effective as of the date executed by the Covered Entity, and shall 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 the Covered Entity, is destroyed or returned to the 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 Agreement. This Agreement applies to all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which Covered Entity provides PHI to Business Associate in any form or medium whatsoever. This Agreement shall automatically be incorporated into all subsequent agreements between Covered Entity and Business Associate involving the use or disclosure of PHI, whether or not expressly referenced therein
7. **Termination for Cause** Upon the Covered Entity's knowledge of a material breach by Business Associate, the Covered Entity shall either:
- a. Notify Business Associate of the breach in writing, and provide an opportunity to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity shall have the right to immediately terminate this Agreement and the Underlying Agreement(s) upon written notice to Business Associate;
  - b. Upon written notice to the Business Associate, immediately terminate this Agreement and the Underlying Agreement(s) if the Business Associate has breached a material term of this Agreement and cure is not possible; or
  - c. If neither termination nor cure are feasible in the Covered Entity's judgment, Covered Entity shall report the violation to the Secretary.
  - d. Covered Entity may terminate the Underlying Agreement(s) and this Agreement upon thirty (30) days written notice in the event (a) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to Section 9.b or (b) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of Health Information that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA.
8. **Effect of Termination**

Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Entity, or created or received by Business Associate on behalf

of the Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.

In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon the Covered Entity's agreement 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.

9. **Miscellaneous**

- a. **Relationship to Underlying Agreement(s) Provisions** In the event that a provision of this Agreement is contrary to a provision of an Underlying Agreement(s), the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of such Underlying Agreement(s), and shall be considered an amendment of and supplement to such Underlying Agreement(s).
- b. **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 the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated concurrent or subsequent to the date hereof and duly executed by the parties hereto.
- c. **Survival** As provided in the Agreement, certain rights and obligations of the Business Associate survive the termination of this Agreement.
- d. **Interpretation** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and Florida law.
- e. **Severability** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof.
- f. **Binding Effect** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors and administrators of the parties.
- g. **Entire Agreement** This Agreement represents the entire Agreement between the parties and supersedes all prior oral and written communication and representations.

- h. Non-Waiver A failure of any party to enforce at any time, any term, provision or condition of this Agreement, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein. In no way whatsoever shall a waiver of any term, provision or condition of this Agreement be valid unless in writing, signed by the waiving party, and only to the extent set forth in such writing.
- i. Execution in Counterpart This Agreement will be executed in counterparts, the effect of which will be the same as if executed at the same time.

This Agreement shall be governed by and construed by the laws of the State of Florida and venue for any action arising out of or relating to this Agreement shall be in Pasco County, Florida.

IN WITNESS WHEREOF, the undersigned have executed and delivered this instrument this 22nd day of September, 2009.

[ SEAL ]

**"COVERED ENTITY"**  
**BOARD OF COUNTY COMMISSIONERS**  
**OF PASCO COUNTY, FLORIDA**

BY: \_\_\_\_\_  
 PAULA S. O'NEIL  
 CLERK & COMPTROLLER

BY: \_\_\_\_\_  
 CHAIRMAN

[ CORPORATE SEAL ]

**"BUSINESS ASSOCIATE"**  
**NCSPPlus Incorporated**

BY: \_\_\_\_\_  
 Corporate Secretary

BY: \_\_\_\_\_  
 Corporate President

Witnessed: \_\_\_\_\_  
 Nicholas Campeşe