

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is effective as of \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Agreement Effective Date”) by and between Rehabilitation Support Services, Inc. having an address of 5172 Western Avenue, Altamont, New York 12009 (“Covered Entity”) and \_\_\_\_\_ having an address of \_\_\_\_\_ (“Business Associate”).

### **1. Definitions**

The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Regulations, and the HITECH Standards.

- a. “*Breach*” shall mean the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Rule”) which compromises the security or privacy of the Protected Health Information. “Breach” shall not include:
  - i. Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
  - ii. Any inadvertent disclosure by a person who is authorized to access Protected Health Information at the Covered Entity or Business Associate to another person authorized to access Protected Health Information at the Covered Entity or Business Associate, respectively, or organized health care arrangement (as defined under the HIPAA Regulations) in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
  - iii. A disclosure of Protected Health Information where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

- b. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- c. “*HIPAA Regulations*” means the regulations related to privacy, security, breach notification and enforcement promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
- d. “*HITECH Standards*” means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“*HITECH*”), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.
- e. “*Minimum Necessary Standard*” means the standard promulgated under HIPAA, the HIPAA Regulations and the HITECH Standards, including but not limited to the provisions in 45 C.F.R. 164.502(b) and 45 C.F.R. 164.514(d), as amended by 42 U.S.C. § 17935(b), requiring that Covered Entities use, disclose and request only the minimum amount of Protected Health Information necessary to accomplish the purpose of the use, disclosure or request.
- f. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Regulations and the HITECH Standards.

## **2. Status of Parties**

Business Associate hereby acknowledges and agrees that Covered Entity is a covered entity and that Business Associate is a business associate of Covered Entity under HIPAA, the HIPAA Regulations and the HITECH Standards. Business Associate has been engaged to perform services for, or provide goods to, or otherwise engage with, Covered Entity. Covered Entity possesses or may possess identifiable health information which is subject to HIPAA, the HIPAA Regulations, and/or the HITECH Standards.

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

- a. *Use or Disclosure.* Business Associate will use reasonable and diligent efforts and employ appropriate safeguards, and will comply with all applicable law and regulation with respect to the disclosure of protected health information both electronically and otherwise, to prevent use or further disclosure of protected health information created or received by Business Associate from, or on behalf of, Covered Entity (“Protected Health Information”) other than as expressly permitted or required by the Agreement or as required by law.

- b. *Safeguards.* Business Associate will use reasonable and diligent efforts and employ appropriate safeguards to prevent any use or disclosure of the Protected Health Information other than uses and disclosures expressly provided for by this Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any Electronic Protected Health Information in accordance with the HIPAA Security Regulations.
- c. *Mitigation.* Business Associate will use reasonable and diligent efforts 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. *Reporting.* Business Associate will use reasonable and diligent efforts to report to Covered Entity any use or disclosure of Protected Health Information in violation of this Agreement of which it becomes aware and any security incident of which it becomes aware, as soon as reasonably practicable and without unreasonable delay. In addition, Business Associate shall report to Covered Entity any Breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services at 45 C.F.R. Part 164, Subpart D and any security incident of which it becomes aware, as soon as reasonably practicable and without unreasonable delay. Business Associate shall provide to Covered Entity such other information as is available to it as is required in a breach notification under 45 C.F.R. Part 164.404(c).
- e. *Subcontractors and Agents.* Business Associate will ensure that any agents, including subcontractors, to whom it provides Protected Health Information received from, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, agree to the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information.
- f. *Access.* When requested by Covered Entity, Business Associate agrees to provide access to Protected Health Information in a Designated Record Set to Covered Entity or to an Individual in order to comply with the requirements under 45 C.F.R. § 164.524. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity.
- g. *Amendment.* When requested by Covered Entity or an Individual, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526. Such amendments shall be made by Business Associate in the time and manner designated by Covered Entity.

- h. *Audit and Inspection.* Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, 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 Covered Entity, or, at the request of Covered Entity, to the Secretary of Health and Human Services (the “Secretary of HHS”) or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary determining Covered Entity's compliance with HIPAA, the HIPAA Regulations and the HITECH Standards. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.
- i. *Documentation of Disclosures.* Business Associate will use reasonable and diligent efforts to document such disclosures of Protected Health Information, and such 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 of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- j. *Accounting.* Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with Section 3.i. of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.<sup>1</sup> Such information shall be provided in a time and manner designated by Covered Entity.
- k. *Compliance with HITECH Standards and Regulations Promulgated Thereunder.* Notwithstanding any other provision in this Agreement, as of the Agreement Effective Date, unless a separate effective date is specified by law or this Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), Business Associate shall comply with the HITECH Standards and the regulations promulgated thereunder, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH § 13405(b); (ii) the prohibition of sale of PHI without authorization unless an exception applies; and (iii) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (iv) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c).

- l. *Minimum Necessary Use and Disclosure.* In conducting functions and/or activities under this Agreement that involve the use and/or disclosure of Protected Health Information, Business Associate shall make reasonable and diligent efforts to limit the use and/or disclosure of Protected Health Information to the minimum amount of information necessary as determined by Covered Entity to accomplish the intended purpose of the use or disclosure.
- m. *Compliance with Regulations.* To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

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

- a. *General Use and Disclosure Provisions.* Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity in connection with the performance of the services if such use or disclosure of Protected Health Information would not violate HIPAA, the HIPAA Regulations or the HITECH Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 4.b. of this Agreement.
- b. *Specific Use and Disclosure Provisions.*
  - (1) Except as otherwise limited in this Agreement, Business Associate may use and disclose Protected Health Information for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such Protected Health Information may only be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are 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 the information was disclosed to the person; and
    - (c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(2) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Data aggregation services involve the combining by the Business Associate of (a) Protected Health Information created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity with (b) Protected Health Information received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

(3) Business Associate is authorized to use Protected Health Information to de-identify the Protected Health Information in accordance with 45 C.F.R. § 164.514(a)-(c) as directed by Covered Entity.

c. Business Associate may only use and disclose Protected Health Information in accordance with the Minimum Necessary Standard under HIPAA, the HIPAA Regulations and the HITECH Standards to the extent that such standard would apply if the activities performed by Business Associate pursuant to this Agreement were performed by Covered Entity, and in accordance with the policies and procedures of Covered Entity adopted to comply with the Minimum Necessary Standard under HIPAA, the HIPAA Regulations, and the HITECH Standards, which policies and procedures Covered Entity shall make available to Business Associate upon request. Business Associate will develop and implement policies and procedures as necessary to comply with this Section 4.c. of the Agreement.

## **5. Obligations of Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA, the HIPAA Regulations and the HITECH Standards if done by Covered Entity or that is not otherwise expressly permitted under Section 4 of this Agreement.

## **6. Term and Termination**

a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall continue until the Agreement is terminated in accordance with the provisions of Section 6.b. or 7.b.

b. *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity will provide Business Associate with a thirty

(30) day notice to cure such breach and then terminate this Agreement if Business Associate does not cure the breach within time period specified by Covered Entity.

Upon Business Associate's knowledge of a material breach by Covered Entity of this Agreement, Business Associate will provide Covered Entity with a thirty (30) day notice to cure such breach and then terminate this Agreement if Covered Entity does not cure the breach within time period specified by Business Associate.

c. *Judicial or Administrative Proceedings.* Either party may terminate this Agreement effective immediately if (i) either party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party has violated any standard or requirement under HIPAA or the security or privacy laws is made in any administrative or civil proceeding in which the party has been joined. d. *Effect of Termination.*

(1) Upon termination of this Agreement, for any reason, Business Associate shall 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 also 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.

(2) Notwithstanding the foregoing, 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 infeasible. Upon mutual agreement of the Parties 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.

## 7. Miscellaneous

a. *Regulatory References.* A reference in this Agreement to a section in HIPAA, the HIPAA Regulations or the HITECH Standards means the section as in effect or as amended from time to time, and for which compliance is required.

- b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of Protected Health Information. Covered Entity may immediately terminate this Agreement in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.
- c. *Survival.* The respective rights and obligations of Business Associate under Section 6.c., 7.f. and 7.g. of this Agreement shall survive the termination of this Agreement.
- d. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable law protecting the privacy, security and confidentiality of Protected Health Information, including, but not limited to, HIPAA, the HIPAA Regulations and the HITECH Standards.
- e. *State Law.* Nothing in this Agreement shall be construed to require Business Associate to use or disclose Protected Health Information without a written authorization from an individual who is a subject of the Protected Health Information, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
- f. *Injunctions.* Covered Entity and Business Associate agree that any violation by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- g. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Covered Entity and its affiliates, and their directors, officers, and employees from and against any and all claims, losses, liabilities, demands, actions, causes of action, assessments, judgments, costs, damages and other expenses, including reasonable attorneys' fees and experts' fees and all costs incurred in connection with the notification of affected individuals, the government and the media concerning a reportable incident which may hereafter be asserted against or incurred by Covered Entity or its affiliates and their directors, officers and employees, agents, representatives, successors and assigns, arising out of,



resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement.

- h. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- i. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.
- j. *Notices.* All notices, requests, consents and other communications required or provided under this Agreement shall be in writing and shall be delivered in person, or mailed by overnight mail with reputable carrier service with a signature indicating delivery, or by certified mail with return receipt requested, at the addresses set forth for each party in the introductory paragraph of this Agreement, or at such other address as a party may from time to time provide for such notices in writing to the other party.
- k. *Independent Contractors.* No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. None of the parties nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other. The parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either Covered Entity or Business Associate that Business Associate constitute an “agent” under such common law.
- l. *Compliance with New York Mental Hygiene Law Statute and Regulations.* In accordance with the statute and regulations of the New York State Office of Mental Health and the Office of the New York State Medicaid Inspector General, all contracts entered into by the Covered Entity must contain a provision requiring that Affected Individuals be subject to, and comply with, the Covered Entity’s compliance program. For purposes of these provisions, “Affected Individuals” are defined as all persons who are affected by the Covered Entity’s risk areas including the Covered Entity’s chief executive and other senior administrators, managers, contractors, subcontractors, independent contractors, agents, governing authority and corporate officer. The failure of any Affected Individual to comply

with the Covered Entity's compliance program may permit the Covered Entity to terminate any such contract.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

[COVERED ENTITY]

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Signature of Authorized Representative

Name: William DeVita

Title: Executive Director

[BUSINESS ASSOCIATE]

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Signature of Authorized Representative

Name: \_\_\_\_\_

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

<sup>1</sup> Covered Entity may want to clarify that Covered Entity should have notice of all requests for access, amendment or accounting even those that individuals address directly to Business Associate. The following language may be used:

In the event that any individual requests access to, amendment of, or accounting of Protected Health Information directly from Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or Business Associate to violate HIPAA or the HIPAA Regulations, Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.