

BUSINESS ASSOCIATE AGREEMENT FOR COVERED ENTITY

This Business Associate Agreement is made and entered into as of the date set forth _____ (the "**Effective Date**"), by and between the undersigned _____; ("**Covered Entity**") and **COUNSOL, LLC** ("**Business Associate**"). Covered Entity and Business Associate may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Covered Entity and Business Associate are parties to a services agreement or other formal business relationship, the terms of which are incorporated herein by reference of this ("BAA") Business Associate Agreement that may involve the receipt, creation, transmission, or maintenance of protected health information of Covered Entity customers ("PHI") private health information data.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein, the consideration set forth in this BAA Agreement, and other good and valuable consideration, receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Statement of Purpose.**

Contemporaneous with the execution of this Agreement, Business Associate and Covered Entity have entered into one or more End User License Agreements (collectively, the "Underlying COUNSOL License Agreement") pursuant to which Business Associate will provide certain limited software applications or other services (the "Services") to Covered Entity as set forth in the COUNSOL License Agreement by and between the parties in addition to this Business Associate Agreement (BAA). Because Business Associate may access, maintain, retain, be exposed to, transmit or become aware of confidential health information of patients of Covered Entity in the performance of the Services, the parties agree to protect the confidentiality of such information in accordance with federal and state laws and regulations including, but not limited to, information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act in Public Law 111-5 (the "HITECH Act"), and the regulations promulgated thereto (collectively, the "HIPAA Regulations"), which include, as amended from time to time, (i) the privacy standards, requirements and specifications promulgated by the Secretary at 45 C.F.R. Parts 160 and 164 subparts A and E, as amended (the "Privacy Rule"), (ii) the security standards, requirements and specifications promulgated by the Secretary at 45 C.F.R. Parts 160, 162 and 164 subparts A and C, as amended (the "Security Rule"), and (iii) the breach notification standards, requirements and specifications enacted by Subtitle D of the HITECH Act.

2. **Definitions.**

Unless otherwise defined herein, capitalized terms shall have the same meaning as set forth in the Regulations:

(a) "**Breach**" shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI, as defined and subject to the exceptions set forth in 45 C.F.R. § 164.202.

(b) "**Compliance Date**" means, in each case, the date by which compliance is required under the referenced provision of the HITECH Act or implementing HIPAA Regulations, as applicable; provided that, in any case for which that date occurs prior to the Effective Date, the Compliance Date means the Effective Date.

(c) "**Electronic Protected Health Information**" or "**EPHI**" means electronic protected health information as defined in the Security Rule that is created, received, maintained or transmitted by or on behalf of the Covered Entity.

(d) "**Individual**" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(e) "**Law**" shall mean all applicable Federal and State Statutes and all relevant regulations there under.

(f) **"Protected Health Information" or "PHI"** shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 164.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.

(g) **"Secretary"** shall mean the Secretary of the Department of Health and Human Services, or his designee.

3. Restrictions on Use of PHI.

Business Associate may use PHI only to perform the permitted and required uses and disclosures as provided by the Underlying Agreement and this Business Associate Agreement (collectively, the "Underlying License Agreements") or as required by law. Business Associate shall not use or disclose PHI received from Covered Entity in any manner that would constitute a violation of the Regulations if Covered Entity made the same use or disclosure, except that Business Associate: (a) may use or disclose such PHI to comply with Business Associate's proper management and administration, and (b) may use or disclose such PHI for Business Associate's legal responsibilities. Business Associate may disclose PHI for the purposes described in this Section 2 only if Business Associate obtains reasonable written assurances from the person or entity to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and such person or entity notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached, or such disclosure is required by law. Without limiting the foregoing, Business Associate may not de-identify or aggregate PHI for any reason, except as otherwise provided in the Agreements and then solely on behalf of Covered Entity. Business Associate hereby agrees to make PHI uses, disclosures and requests for protected health information consistent with Covered Entity's policies and procedures; minimum necessary.

Permitted and Required Uses and Disclosures of PHI That May Be Made Without Your Authorization or Opportunity to Object.

We may use or disclose your client's PHI without your authorization in the following situations:

Required By Law.

We may use or disclose your client's PHI data records to the extent that the use or disclosure is required by law. The use or disclosure will be made in compliance with the law and will be limited to the relevant requirements of the law. You will be notified, as required by law, of any such uses or disclosures.

Public Health.

We may disclose your client's PHI data records for public health activities and purposes to a public health authority that is permitted by law to collect or receive the information. The disclosure will be made for the purpose of controlling disease, injury or disability. We may also disclose your client's or your entire practice ePHI data records, if directed by the public health authority, to a foreign government agency that is collaborating with the United States public health authority.

Communicable Diseases.

We may disclose your client's PHI data records, if authorized by law, to a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading the disease or condition.

Health Oversight.

We may disclose your client's PHI data records to a health oversight agency for activities authorized by law, such as audits, investigations and inspections. Oversight agencies seeking this information include government agencies that oversee the healthcare system, government benefit programs, other government regulatory programs and civil rights laws.

Abuse or Neglect.

We may disclose your client's PHI data records to a public health authority that is authorized by law to receive reports of child abuse or neglect. In addition, we may disclose your client's PHI data records to the governmental entity or agency authorized to receive such information if we believe that your client's have been a victim of abuse, neglect or domestic violence. In this

case, the disclosure will be made consistent with the requirements of applicable federal and state laws.

Food and Drug Administration ("FDA").

We may disclose your client's PHI data records to a person or company required by the FDA to report information such as adverse events and product defects, to enable product recalls, to make repairs or replacements, or to conduct post marketing surveillance.

Legal Proceedings.

We may disclose individual client's or the entire practice PHI data records in response to a court or administrative order. We may also disclose PHI data records in response to a subpoena, discovery request, or other lawful process, but only if a reasonable effort has been made to tell you about the request or to obtain an order protecting the information requested.

Law Enforcement.

We may release individual or the entire practice ePHI data records for certain law enforcement purposes including, for example, reports required by law, to comply with a court order or warrant, or to report or answer questions about a crime.

Coroners, Funeral Directors and Organ Donation.

We may disclose your client's ePHI data records to a coroner, funeral director or medical examiner as necessary to permit them to carry out their duties.

Research.

We may disclose your clients' PHI data records to researchers when their research has been approved by an institutional review board that has reviewed the research proposal and established protocols to ensure the privacy of your client's PHI.

Criminal Activity.

Consistent with applicable federal and state laws, we may disclose your client's PHI if we believe that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. We may also disclose your client's PHI if it is necessary for law enforcement authorities to identify or apprehend an individual.

Military Activity and National Security.

When the appropriate conditions apply, we may use or disclose PHI of individuals who are Armed Forces personnel (1) for activities deemed necessary by appropriate military command authorities (2) for the purpose of a determination by the Department of Veterans Affairs of your client's eligibility for benefits or (3) to foreign military authority if your client's are a member of that foreign military services. We may also disclose your practice ePHI data records to authorize federal officials for conducting national security and intelligence activities, including for the provision of protective services to the President of the United States or other officials.

Workers' Compensation.

Individual or your entire practice ePHI data records may be disclosed by us as authorized to comply with workers compensation laws and other similar legally established programs.

Required Uses and Disclosures.

Under the law, we must make disclosures to you and to the U.S. Department of Health and Human Services when required to determine our compliance with the requirements of the Federal Privacy Standards.

4. Application of the Regulations to Business Associate

Business Associate understands and acknowledges that all applicable provisions of the Regulations apply directly to Business Associate and to each of its subcontractors and agents (and their subcontractors and agents) who receive or have access to the PHI and that Business Associate and each such subcontractor or agent is subject to compliance with all applicable provisions of the Regulations, including without limitation, all applicable security and privacy laws, rules and regulations contained in or promulgated under the Regulations. Without limiting the foregoing, Business Associate shall ensure that any agent or

subcontractor of Business Associate that creates, receives, maintains, or transmits PHI on behalf of Business Associate ("Subcontractor") agrees in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information ("Sub-BA Agreement"); each Sub-BA Agreement shall require the applicable Subcontractor to enter into a similar written agreement with each of its subcontractors and agents who receive, create, transmit or maintain PHI or otherwise have access to the PHI. If Covered Entity is itself a business associate (or subcontractor of a business associate) with respect to the PHI, Business Associate agrees that it shall comply with all provisions of the business associate agreement between Covered Entity and the applicable covered entity or business associate with respect to the PHI.

Any other capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as set forth in the HIPAA Privacy and Security Rules and the HITECH Act.

5. Business Associate Compliance.

Business Associate agrees to comply with its obligations as a business associate under HIPAA and acknowledges that it is subject to, and agrees to comply with, HIPAA, the HITECH Act and all applicable guidance and regulations issued in the past, present or future by the Secretary to implement HIPAA and the HITECH Act, including, but not limited to, HIPAA Regulations and all other Law. Business Associate will not act in any way to hinder, and will act in good faith to assist the Covered Entity to comply with HIPAA, the HITECH Act, HIPAA Regulations and all other Law. Business Associate agrees to comply with applicable state and federal Law relating to the confidentiality, security, privacy, and reporting or notification of breaches of health information.

6. General Confidentiality.

Business Associate recognizes the sensitive and confidential nature of the Protected Health Information and agrees:

(a) That such Protected Health Information will be used or disclosed, including the uses and disclosures inherent in the performance of the Services which are included in the License Agreement, solely as required or permitted under this Agreement and in accordance with Law or as required by Law, including without limitation HIPAA, the HITECH Act, HIPAA Regulations and provided that such uses and disclosures would not violate the HIPAA, the HITECH Act, HIPAA Regulations and all other Law if performed by the Covered Entity itself; and

(b) That Business Associate shall use reasonable safeguards designed to ensure that the transmission, handling, storage, and use of such Protected Health Information by Business Associate will preserve the confidentiality of the Protected Health Information, in accordance with HIPAA, the HITECH Act, HIPAA Regulations and all other Law.

7. Privacy Rule Responsibilities of Business Associate.

(a) Business Associate will maintain accurate records of all transactions made in connection with this Agreement.

(b) Business Associate agrees to document and make available to Covered Entity the information required for the Covered Entity to provide an accounting of disclosures as set forth in the Privacy Rule at 42 C.F.R. § 164.528 for uses and disclosures for which an accounting is required. Such records and accounting shall be provided to Covered Entity within ten (10) days of a written request from Covered Entity and Business Associate will maintain information necessary to provide an accounting for a period of six (6) years from the date of the disclosure. Pursuant to the License Agreement and subject to further agreement between the parties, Business Associate normally will retain Protected Health Information that it receives from Covered Entity for one (1) year from the date of receipt.

(c) Business Associate agrees to report to the Covered Entity within five (5) days any use or disclosure of information it learns is other than as permitted in this Agreement. To the extent applicable, Business Associate shall also follow Section 7 of this agreement relating to breaches of unsecured Protected Health Information.

(d) Business Associate agrees that, to the extent that it contracts with any agents or subcontractors who will have access to any Protected Health Information, it will ensure that the agents or subcontractors agree to restrictions and conditions on the use or disclosure of Protected Health Information at least as stringent as those that apply throughout this Agreement with respect to such information and shall not, in any manner that violates HIPAA, the HITECH Act, HIPAA Regulations and all other Law, use or disclose PHI except as set forth in this Agreement and under all applicable Law.

(e) Business Associate, including its agents and subcontractors, agrees to limit any request, use and disclosure of Protected Health Information, to the extent practicable, to the Limited Data Set or, if needed, to the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure in compliance with the HITECH Act and any regulations or guidance promulgated pursuant thereto. Business Associate acknowledges that the Secretary is required by the HITECH Act to issue guidance on what constitute "minimum necessary" for purposes of the Privacy Rule. Business Associate agrees to comply with the guidance, once issued by the Secretary, and to only request, use or disclose the minimum amount of Protected Health Information as described in such guidance.

(f) Business Associate agrees to make Protected Health Information regarding a specific Individual available to that Individual as set forth in the Privacy Rule at 45 C.F.R. § 164.524 upon the specific request of the Covered Entity. Should Business Associate receive a request from an Individual for such access, Business Associate shall forward such request to Covered Entity. Any denials of access to the Protected Health Information shall be the responsibility of the Covered Entity.

(g) Business Associate agrees to incorporate any amendments to Protected Health Information or to a record regarding an Individual contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set) when provided by an Individual as set forth in the Privacy Rule codified at 45 C.F.R. 164.526, and requested by the Covered Entity. Business Associate shall forward to Covered Entity any Individuals request for an amendment within ten (10) days of receipt of such a request. Any approvals or denials of amendment to the Protected Health Information shall be the responsibility of the Covered Entity.

(h) Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information, including policies and procedures relating to Protected Health Information, received from, or created or received by contracts on behalf of the Covered Entity available to the Covered Entity and the Secretary for the sole purpose of compliance determinations as set forth in the Privacy Rules.

(i) Business Associate and Covered Entity agree that the confidentiality provisions of this Agreement, specifically Sections 2 through 7, shall survive termination of this Agreement.

(j) Business Associate may, solely at the request of the Covered Entity, provide Data Aggregation Services relating to the health care operations of the Covered Entity.

(k) Business Associate is not prohibited by this Agreement from utilizing Protected Health Information for its proper management and administration or to carry out its legal responsibilities, if any. Further, Business Associate is not prohibited from disclosing Protected Health Information for its proper management and administration or to carry out its legal responsibilities if the disclosure is required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by Law or for the purpose for which it was disclosed to the person. Business Associate will further require that the person to whom information is disclosed inform the Business Associate of any breach of confidentiality or violation of the HIPAA Regulations with respect to that information. In such event, Business Associate will notify the Covered Entity of any instances of which it is aware in which the confidentiality of the information has been breached or the Privacy Rules were otherwise violated.

(l) Business Associate is not prohibited from using Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with the Privacy Rules.

(m) To the extent Business Associate has Protected Health Information in a Designated Record Set; Business Associate agrees to provide access, at the request of Covered Entity, within five (5) days of receipt of a written request from 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 C.F.R. § 164.524.

(n) Business Associate agrees to mitigate, to the extent practicable, any material adverse effect that is known to Business Associate resulting from a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(o) With respect to Protected Health Information that Business Associate creates or receives on behalf of the Covered Entity, Covered Entity will be responsible for obtaining from an Individual any necessary authorizations to use or disclose that Individual's Protected Health Information, in accordance with 45 C.F.R. § 164.506 or § 164.508.

(p) Within two (2) days of receiving a request from an Individual for a restriction on uses and disclosures of Protected Health Information, as set forth in the Privacy Rule at 45 C.F.R. § 164.522, Business Associate shall forward such request to Covered Entity. Any denials of restrictions to the Protected Health Information shall be the responsibility of the Covered Entity. If the Covered Entity agrees to a restriction, Business Associate will be responsible for using and disclosing Protected Health Information consistent with that restriction. Failure to act in accordance with an agreed-to or required restriction constitutes a violation of this Agreement and must be reported to the Covered Entity.

(q) With respect to Protected Health Information that Business Associate creates or receives on behalf of the Covered Entity, Business Associate agrees to not directly or indirectly receive remuneration in exchange for any Protected Health Information as prohibited by, and subject to the exceptions under, 42 U.S.C. § 17935(d) and any related HIPAA Regulations, as of their respective Compliance Dates. Failure to act in accordance with this restriction on selling Protected Health Information constitutes a violation of this Agreement and must be reported to the Covered Entity within two (2) days.

(r) With respect to Protected Health Information that Business Associate creates or receives on behalf of Covered Entity, Business Associate agrees to not make or cause to be made any communication about a product or service that encourages recipients of the communication to purchase or use the product or service as prohibited by, and subject to the exceptions under, 42 U.S.C. § 17936(a) and any related HIPAA Regulations, as of their respective Compliance Dates. Failure to act in accordance with this restriction on marketing communications constitutes a violation of this Agreement and must be reported to the Covered Entity.

(s) With respect to Protected Health Information that Business Associate creates or receives on behalf of the Covered Entity, Business Associate agrees to not make or cause to be made any written fundraising communication that is a Health Care Operation without provision, in a clear and conspicuous manner, of an opportunity for the recipient to elect not to receive further fundraising communications in accordance with 42 U.S.C. § 17936(b) and any related HIPAA Regulations, as of their respective Compliance Dates. Failure to act in accordance with this restriction on fundraising communications constitutes a violation of this Agreement and must be reported to the Covered Entity.

(t) The parties acknowledge that the HITECH Act added additional responsibilities on Covered Entity and Business Associate relating to the privacy and security of health information. Business Associate hereby agrees that the terms and conditions of this Business Associate Agreement shall be deemed to comply with the privacy and security provisions contained in the HITECH Act. The parties agree to act in good faith and promptly execute an amendment to this Business Associate Agreement upon the promulgation of any additional final rules, regulations or guidance by the Secretary as required by the HITECH Act, which amendment complies with the additional requirements of the HITECH Act and its implementing guidance and regulations.

(i) HITECH. Business Associate acknowledges and understands that HITECH (including the rules and regulations promulgated thereunder) imposes direct responsibility on Business Associate for its conduct as a business associate and that Business Associate is subject to direct liability for both civil and criminal penalties for its violations of the Regulations and may be subject to direct liability for both civil and criminal penalties for the violations of its Subcontractors. Any limitation of liability in

the Underlying Agreement shall not apply to damages hereunder. Each party agrees to indemnify and hold harmless the other party and the other party's directors, officers, agents and employees, from and against any and all penalties, claims, actions, liability, loss, damages or expense (including court costs and reasonable attorneys' fees) arising out of the indemnifying party's act or failure to act resulting in damages relating to the unauthorized access to, or the disclosure, loss, destruction or use of PHI, or other violation of this Agreement.

8. Responsibilities of Business Associate Regarding Electronic Protected Health Information.

(a) With respect to EPHI, without limiting the other provisions of this Agreement, Business Associate will

(i) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives or transmits on behalf of the Covered Entity, as required by the Security Rule;

(ii) Ensure that any agent, including a sub-contractor Business Associate, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect it; and

(iii) report to Covered Entity any Security Incident of which it becomes aware within five (5) business days of becoming aware of such Security Incident.

(b) Business Associate agrees to implement and maintain a written security program that contains the necessary administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI and must implement and maintain a privacy policy and procedure both in compliance with the HITECH Act and HIPAA including, but not limited to, the HIPAA Regulations.

9. Responsibilities of Business Associate Regarding Unsecured Protected Health Information.

(a) **Securing PHI.** Unless specifically agreed to by the Covered Entity, Business Associate agrees to implement, in a reasonable and appropriate manner, the technologies and methodologies the HITECH Act or other Law specifies in order to render PHI that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity, unusable, unreadable, or indecipherable to unauthorized individuals, thereby making the PHI secure. Business Associate shall ensure that any agent, including, but not limited to, subcontractors or vendors to whom it provides the Covered Entity's PHI, will implement, in a reasonable and appropriate manner, the technologies and methodologies the HITECH Act or other Law specifies with respect to rendering the Covered Entity's PHI unusable, unreadable or indecipherable to unauthorized individuals.

(b) **Breach Notification.** With respect to any Unsecured PHI, Business Associate shall report to the Covered Entity any suspected Breach (as defined in the HITECH Act and implementing regulations) discovered by Business Associate or any agent or subcontractor within five (5) business days of Discovery including any incident that involves an unauthorized acquisition, access, use or disclosure of PHI, even if Business Associate believes the incident will not rise to the level of a Breach. The report must include (or be supplemented on an ongoing basis as information becomes available) with:

(i) the identification of all Individuals whose Unsecured PHI was or is believed to have been involved

(ii) all other information reasonably requested by Covered Entity to enable the Covered Entity to perform and document a risk assessment in accordance with the HITECH Act and implementing regulations to determine whether a Breach occurred, and;

(iii) all other information reasonably necessary to provide notice to Individuals, HHS and/or the media. At the Covered Entity's sole option, the Covered Entity may delegate to Business Associate the responsibility for determining (and providing evidence to the Covered Entity) that any such incident is a Breach, including the requirement to perform a risk assessment, and/or for providing or paying all costs to the Covered Entity to provide all legally required notifications to Individuals, HHS and/or the media, on behalf of the Covered Entity. Business Associate shall provide these notifications in accordance with the data breach notification

requirements set forth in the HITECH Act and 45 C.F.R. Parts 160 and 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications. In the event that the Covered Entity delegates these obligations to Business Associate and in the event of a Breach, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, Business Associate shall provide the Covered Entity with written notification of its risk assessment of the Breach, a list of Individuals, a copy of the template notification letter Business Associate is sending to Individuals, and evidence that all required notifications, including any media or Secretary notifications have been made.

10. Responsibilities of Covered Entity Regarding Electronic Protected Health Information.

With respect to EPHI, without limiting the other provisions of this Agreement, Covered Entity will

- (i) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives or transmits to Business Associate on our behalf, as required by the Security Rule;
- (ii) report to Business Associate any Security Incident of which it becomes aware within five (5) business days of becoming aware of such Security Incident.
- (iii) Covered Entity agrees to implement and maintain a written security program that contains the necessary administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI and must implement and maintain a privacy policy and procedure both in compliance with the HITECH Act and HIPAA including, but not limited to, the HIPAA Regulations.
- (iv) Limitations on Use or Disclosure. Covered Entity agrees to notify Business Associate promptly after becoming aware of any arrangements permitted or required of Covered Entity by the Regulations that may impact in any manner the use or disclosure of PHI by Business Associate under the Agreements, including: (a) restrictions on use or disclosure of PHI agreed to by Covered Entity upon request of an individual; and (b) changes in, or withdrawal of, an individual's consent or authorization with respect to the disclosure of his/her PHI.

Covered Entity agrees to comply with its obligations as a covered entity under HIPAA and acknowledges that it is subject to, and agrees to comply with, HIPAA, the HITECH Act and all applicable guidance and regulations issued in the past, present or future by the Secretary to implement HIPAA and the HITECH Act, including, but not limited to, HIPAA Regulations and all other Law. Covered Entity will not act in any way to hinder, and will act in good faith to assist the Business Associate to comply with HIPAA, the HITECH Act, HIPAA Regulations and all other Law. Covered Entity agrees to comply with applicable state and federal Law relating to the confidentiality, security, privacy, and reporting or notification of breaches of health information.

11. Term and Termination.

(a) **Term.** The term of this BAA Agreement shall begin on the Effective Date and continue until termination of the COUNSOL License Agreement or until otherwise terminated as noted herein.

(b) **Termination and Amendment by Operation of Law.** This Agreement shall terminate immediately in the event that a HIPAA Business Associate Agreement is no longer applicable or required under then current Law. If on the advice of Covered Entity's counsel, Covered Entity reasonably determines that the terms of this Agreement likely would be interpreted to violate or not comply with any applicable Laws, the parties shall negotiate in good faith to amend the Agreement to comply with such Laws. If the parties cannot reasonably agree on such amendment, then this Agreement and the underlying COUNSOL License Agreement or the relevant portions of such agreement shall terminate.

(c) **Termination of Agreement by Business Associate.** If Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of its obligations relating to PHI under the Agreement, then Business Associate will take reasonable steps to cure the

breach or end the violation, including but not limited to notifying the Covered Entity of and allowing the Covered Entity a reasonable period in which to cure the breach or violation. If such steps are unsuccessful, Business Associate shall terminate the Agreement, if feasible, or, if termination is not feasible report the breach to the Secretary.

(d) **Termination of Agreement by Covered Entity.** Covered Entity may terminate this Agreement immediately if it reasonably determines that Business Associate has violated a material term of this Agreement, HIPAA, the HITECH Act, HIPAA Regulations or any other applicable Law; provided, however, that in the event that termination of this Agreement is not feasible, in the Covered Entity's sole discretion, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary. In the event that Business Associate breaches this Agreement, HIPAA, the HITECH Act, HIPAA Regulations or any other applicable Law, Covered Entity reserves the right to cure such breach. Business Associate will cooperate with any such efforts undertaken by Covered Entity. Cure of breach does not limit Covered Entity's ability to immediately terminate this Agreement, at its sole option.

(e) **Injunctive Relief.** Business Associate acknowledges and agrees that the terms of this Agreement and the Privacy Rules are necessarily of a special, unique and extraordinary nature and that the loss arising from a breach thereof cannot reasonably and adequately be compensated by money damage, as such breach will cause Covered Entity to suffer irreparable harm. Accordingly, upon failure of Business Associate to comply with the terms of the Agreement, HIPAA, the HITECH Act, HIPAA Regulations or any other applicable Law, and except as otherwise provided herein, Covered Entity or any of its successors or assigns shall be entitled to injunctive or other extraordinary relief and with such injunctive or other extraordinary relief to be cumulative to, but not in limitation of, any other remedies that may be available to Covered Entity, its successors or assigns, such relief to be without the necessity of posting a bond.

(f) **Effect of Termination.** Upon termination or expiration of this Agreement, Business Associate shall within ten (10) days either return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity that the Business Associate maintains in any form and retain no copies of such information to the extent that such action is feasible and not prohibited by other applicable law. This provision applies to all sub-Business Associates or agents of Business Associate who may possess Protected Health Information on behalf of the Business Associate and/or the Covered Entity. In the event that the Covered Entity has ascertained that the return or destruction of such information is not feasible or permissible, Business Associate agrees to continue to comply with all provisions of this Agreement with regard to its uses, storage, and disclosure of such Protected Health Information for so long as Business Associate maintains such Protected Health Information.

12. Miscellaneous Terms.

(a) **Independent Contractor Status.**

In performing Business Associate's responsibilities pursuant to this Agreement, it is understood and agreed that Business Associate is all times acting as an independent contractor and that Business Associate is not a partner, joint-venture(r), agent or employee of the Covered Entity.

(b) **Governing Law and Venue.**

This Agreement shall be construed and governed according to the laws of the State of Florida, without giving effect to its conflict of law's provisions.

(c) **Assignment.**

No assignment of this Agreement or the rights and obligations hereunder shall be valid without the prior written consent of the non-assigning party. Notwithstanding the foregoing, this Agreement may be assigned to any successor or affiliate of the Covered Entity by providing Business Associate with ten (10) days prior written notice of such assignment.

(d) **Notices.**

Any notice to a party hereto pursuant to this Agreement shall be given in writing by personal delivery, overnight delivery, facsimile, telecommunications, or United States certified or registered mail, return

receipt requested, to the addresses established through the License Agreement. The parties shall hereafter notify each other in accordance herewith of any change of address to which notice is required to be sent. Notice shall be effective upon delivery.

(e) Parties Bound.

This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, and permitted assigns. This Agreement shall also bind and inure to the benefit of any successor of Covered Entity by sale, merger or consolidation.

(f) Data Ownership.

Business Associate acknowledges and agrees that the Covered Entity is the owner of the Protected Health Information.

(g) Non-Waiver.

No waiver by either of the parties hereto of any failure by the other party to keep or perform any provision, covenant or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other provision, covenant or condition.

(h) Additional Documents.

Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement.

(i) Entire Agreement.

This Agreement, including any exhibits or addenda identified and incorporated by reference herein, contains the entire understanding of the parties and supersedes any prior written or oral agreements or understandings among them concerning the subject matter set forth above.

There are no representations, warranties, covenants, promises, agreements, arrangements or understandings, oral or written, express or implied among the parties hereto relating to the subject matter set forth above which have not been fully expressed herein.

(j) Amendments.

This Agreement can be amended only by an instrument in writing signed by the parties. Amendments to this Agreement shall be effective as of the date stipulated therein. The parties agree to take such reasonable actions as are necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with HIPAA, the HITECH Act, HIPAA Regulations or any other applicable Law.

(k) Severability.

The sections, paragraphs and individual provisions contained in this Agreement shall be considered severable from the remainder of this Agreement and in the event that any section, paragraph or other provision should be determined to be unenforceable as written for any reason, such determination shall not adversely affect the remainder of the sections, paragraphs or other provisions of this Agreement. It is agreed further, that in the event any section, paragraph or other provision is determined to be unenforceable, the parties shall use their best efforts to reach agreement on an amendment to the Agreement to supersede such severed section, paragraph or provision.

(l) Interpretation.

Any ambiguity in this Agreement will be resolved in favor of a meaning that permits the Covered Entity to comply with the HIPAA Regulations.

(m) Assistance in Litigation or Administrative Proceedings.

Business Associate shall make him or herself, and any subcontractors, employees or agents assisting Business Associate in the performance of Business Associate's obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against Covered Entity, its directors, officers, or employees based upon a claimed violation of Law.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth below.

BUSINESS ASSOCIATE
COUNSOL, LLC

COVERED ENTITY

[_____]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Questions and Complaints.

You may file a complaint with us or with the Secretary of the Department of Health and Human Services if you believe your privacy rights have been violated by us. You may file a complaint with us by notifying our Privacy Officer of your complaint. We will not retaliate against you for filing a complaint. For further information about the complaint process, or to make any requests or inquiries, you may contact our Privacy Officer at:

Privacy Officer
CounSol, LLC
6735 Conroy Rd Suite 333
Orlando, FL 32835
E-mail: privacy@counsol.com

Phone Number	800-910-3568
Fax Number	800-910-3568
Business Hours	Mon-Fri 10am-6pm EST
Mailing Address	6735 Conroy Rd Suite 333 Orlando, FL 32835

This agreement was effective on April 14, 2003 and revised on:

Latest Revision:	July 30, 2014
Latest Revision:	November 18,2020
Latest Revision:	November 21,2020
Latest Revision:	November 25,2020
Latest Revision:	December 20, 2020
Latest Revision	July 6, 2021

End