

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“HIPAA Agreement”), effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, is made by and between \_\_\_\_\_ (“Covered Entity”) and ABILITY Network Inc. (“ABILITY”) for the purpose of compliance with the Health Insurance Portability and Accountability Act and its implementing administrative simplification regulations (45 CFR 160-164) (“HIPAA”) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”). This HIPAA Agreement hereby amends and is incorporated into any underlying agreement with respect to Covered Entity and ABILITY; to the extent that the provisions of this HIPAA Agreement conflict with those of an underlying agreement, the provisions of this HIPAA Agreement shall control. Terms used but not otherwise defined herein shall have the same meaning as those terms defined in 45 CFR 160.103 and 164.501.

If, in the provision of services to Covered Entity, ABILITY representatives receive or have access to Protected Health Information (“PHI”) that is created and/or maintained by Covered Entity, ABILITY shall be bound to the terms outlined below. These provisions will not apply to the disclosure, use or access to de-identified information:

1. Permitted Uses and Disclosures. ABILITY may use and disclose PHI, if in the course of performing services for or on behalf of Covered Entity or as required or permitted by law, regulation, regulatory agency or by any accrediting body to whom Covered Entity or ABILITY may be required to disclose such PHI; ABILITY may also use PHI for the proper management and administration, or to carry out the legal responsibilities of ABILITY.
2. ABILITY’s Obligations. ABILITY shall:
  - a. ensure that its agents and subcontractors to whom it may provide PHI agree to the same terms and conditions as are applicable to ABILITY as set forth herein;
  - b. implement appropriate and reasonable safeguards to prevent use or disclosure of PHI other than as permitted herein and report to Covered Entity any use or disclosure of PHI not provided for by this Agreement;
  - c. make available to the Secretary of Health and Human Services, ABILITY’s practices, books and records relating to the use or disclosure of PHI for purposes of determining Covered Entity’s compliance with HIPAA; subject to any attorney-client or other privileges;
  - d. report to the Covered Entity, and mitigate to the extent practicable, any harmful effect that is known to ABILITY of, uses or disclosures of PHI of which ABILITY becomes aware that do not comply with the terms herein;
  - e. to the extent that Covered Entity and ABILITY agree in writing that ABILITY shall maintain PHI as part of a Designated Record Set, upon Covered Entity’s request, provide access and make amendments to such PHI, in order to meet the requirements under HIPAA.
  - f. document such uses and disclosures of PHI and, upon Covered Entity’s request, provide such information as would be required for Covered Entity to account for disclosures of PHI as required under HIPAA; and
  - g. when ABILITY ceases to perform services for or on behalf of Covered Entity, ABILITY will destroy all PHI received or if such destruction of PHI is not feasible, continue to abide by the terms set forth herein with respect to such PHI.
  - h. following a discovery of a breach of Unsecured Protected Health Information, as defined in HITECH, notify Covered Entity of such breach within thirty (30) days of the discovery of the breach.
  - i. use Covered Entity’s EDI password only as expressly authorized by Covered Entity and only for the submission and retrieval of Covered Entity’s EDI transactions. If covered entity uses ABILITY for exchange of EDI transactions with their Medicare contractor, this paragraph grants this explicit authorization.
3. Term and Termination. The term of this HIPAA Agreement shall be effective as of the date set forth above and shall terminate when ABILITY ceases to perform services with respect to Covered Entity, except as provided in 2(g) above. Covered Entity may terminate this HIPAA Agreement if ABILITY fails to cure or take substantial steps to cure a material breach of this HIPAA Agreement within 30 days after receiving written notice of such material breach from Covered Entity.

4. Agreement. This Agreement constitutes the entire Agreement between the parties concerning its subject matter. This Agreement may be amended only in writing signed by Covered Entity and ABILITY. The parties agree to take such action to amend this Agreement as is necessary to comply with the requirements of HIPAA and HITECH. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Minnesota, including all matters of construction, validity and performance.

ABILITY Network Inc.

\_\_\_\_\_  
Covered Entity

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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