[Insert name of Practice]
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "**Agreement**") is made as of _____, 2013 (the "Effective Date"), by and between **[Practice]** ("Covered Entity") and _____ ("Business Associate"), each individually a "Party" and together the "Parties."

BACKGROUND STATEMENTS

A. **Purpose**. The purpose of this Agreement is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended by Sections 13400 through 13424 of the Health Information Technology for Economic Clinical Health Act ("HITECH") and the final omnibus Health Insurance Portability and Accountability Act rule ("Omnibus Rule") (the 1996 Act as amended by HITECH and the Omnibus Rule is referred to herein as "HIPAA"), the associated regulations, 45 C.F.R. parts 160 and 164, as may be amended, and other guidance that may be issued by the federal Department of Health and Human Services ("HHS") (all of the above laws, rules, regulations, and guidance are collectively referred to herein as the "HIPAA Standards"). The HIPAA Standards require Covered Entity to obtain written assurances from Business Associate that Business Associate will appropriately safeguard Protected Health Information ("PHI") and protect its integrity and confidentiality.

B. **Relationship**. Covered Entity and Business Associate have entered into a relationship under which Business Associate may receive, use, obtain, access, maintain, transmit or create PHI from or on behalf of Covered Entity in the course of providing services in connection with _____ (collectively, the "Services"):

AGREEMENT

In consideration of the foregoing, the Parties hereby agree as follows:

Section 1. Permitted Uses and Disclosures.

1.1 General. Business Associate may use and/or disclose PHI only as permitted or required by this Agreement or as otherwise required by law. Business Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Services. Business Associate will request from Covered Entity no more than the minimum PHI necessary to perform the Services, which means that such requests shall only be for information contained in Limited Data Sets when practicable (unless there is superseding guidance, rules, or regulations issued by HHS regarding the minimum necessary requirement, in which case Business Associate agrees to abide by the terms of such guidance, rules, or regulations).

Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Covered Entity's obligations under the HIPAA Standards, (ii) that would violate the HIPAA Standards if disclosed or used in such a manner by Covered Entity, including, but not limited to, the additional HITECH requirements relating to privacy, (iii) that is otherwise not in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), or (iv) that does not comply with [-[**Insert applicable state**] state law as it applies to Covered Entity and/or Business Associate.

1.2 Use For Business Associate's Purposes. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Unless specifically requested in writing by Covered Entity, Business Associate shall not use PHI to provide Data Aggregation services.

1.3 Disclosure For Business Associate's Purposes. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided the disclosures are required by law, or Business Associate obtains written reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

1.4 Sale Prohibition. Business Associate shall not directly or indirectly receive any remuneration in exchange for PHI or use or disclose PHI for marketing or fundraising purposes.

Section 2. Safeguards for the Protection of PHI.

Business Associate will implement and maintain the security safeguards and other related measures required by the HIPAA Standards, including, but not limited to, those required by Subpart C of 45 C.F.R. § 164, and particularly 45 C.F.R. §§ 164.306 (security standards), 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and documentation), 164.502 (disclosures of PHI), 164.504 (organizational requirements), and the additional security provisions of HITECH as each of the foregoing applies to Covered Entity. Such safeguards shall be designed to protect the confidentiality and integrity of such PHI obtained, accessed or created from or on behalf of Covered Entity.

Section 3. Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.

3.1 Notice Obligation**.** If Business Associate has knowledge of or discovers any Security Incident, Breach, or any other use or disclosure or unauthorized access of PHI not provided for by this Agreement, then Business Associate will immediately notify Covered Entity in accordance with Section 8.6, as required by 45 C.F.R. 164.410. This reporting obligation to Covered Entity shall include, but is not limited to, any "Breach" of "Unsecured Protected Health Information", as those terms are used in Section 13405 of HITECH and further defined at 45 C.F.R. § 164.402 and amended by the Omnibus Rule. Business Associate shall cooperate with Covered Entity in order to allow it to fulfill its obligations under 45 C.F.R. §§

164.400-414, as well as fulfill its obligations therein and under any other applicable HIPAA Standards.

3.2 Timing of Notice. Such notice shall be delivered immediately, but in no event later than sixty (60) days after Discovery of a Breach. Business Associate shall have the burden of demonstrating that all notifications were made as required by the HIPAA Standards, including evidence demonstrating the necessity of any delay.

3.3 Content of Notice. Such notice shall include the identification of each Individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or improperly disclosed, or any other information necessary to comply with the HIPAA Standards.

3.4 Law Enforcement Delay. Business Associate shall comply with the terms of 45 C.F.R. § 164.412 with regard to an oral or written statement made by law enforcement regarding notification under this Section 3 in connection with a Breach of Unsecured Protected Health Information.

3.5 Mitigation. Business Associate shall take any action necessary or proper to mitigate, to the extent practicable, any adverse or harmful effect of an unauthorized use or disclosure, Security Incident, or Breach.

Section 4. Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.

Business Associate shall require any subcontractor, agent, or other representative that is authorized to receive, use, maintain, transmit, create or have access to PHI obtained or created under the Agreement, to agree, in a Business Associate Agreement, to adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to Business Associate under this Agreement. Such agreement shall identify Covered Entity as a third-party beneficiary with rights of enforcement in the event of any violations.

Section 5. Individual Rights.

Business Associate will comply with the following Individual rights requirements as applicable to PHI used or maintained by Business Associate, as well as comply with any other additional requirements under HITECH that relate to such rights that apply to Covered Entity:

5.1 Right of Access. Business Associate agrees to provide access to PHI, at the request of Covered Entity and in a timely manner, to Covered Entity or, as directed, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 and Section 13405(e) of HITECH. This shall include the obligation to provide electronic access, as specified in Section 13405 of HITECH, if Business Associate uses or maintains an Electronic Health Record.

5.2 Right of Amendment. Business Associate agrees to make any amendment(s) to PHI that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, and in a timely manner.

5.3 Right to Accounting of Disclosures. Business Associate agrees to document disclosures of PHI as required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and Section 13405(c) of HITECH and in a timely manner. Business Associate agrees to provide the accounting to Covered Entity, unless Covered Entity requests that the accounting be provided directly to the Individual. If Business Associate maintains PHI in an Electronic Health Record, the scope of accounting under this Section 5.3 shall further comply with the requirements of Section 13405(c) of HITECH as such requirements apply to Covered Entity.

5.4 Restricted Disclosures to Health Plans. If Business Associate discloses PHI to a Health Plan on behalf of Covered Entity for the purposes of Payment or Health Care Operations, Business Associate shall not include in any such disclosure information regarding any item or service for which an Individual paid out of his or her own pocket in-full and has requested that the item or service not be included in such disclosures.

Section 6. Audit, Inspection and Enforcement by Covered Entity.

With reasonable notice, Covered Entity may audit Business Associate to monitor compliance with this Agreement. Business Associate will promptly correct any violation of this Agreement found by Covered Entity and will certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement. Business Associate will make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to HHS, the Office for Civil Rights ("OCR"), or their agents or to Covered Entity for purposes of monitoring compliance with the HIPAA Standards.

Section 7. Term and Termination.

7.1 Term. This Agreement will become effective on the Effective Date. Unless terminated sooner pursuant to Section 7.2, this Agreement shall remain in effect for the duration of all Services provided by Business Associate and for so long as Business Associate shall remain in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity, unless Covered Entity has agreed in accordance with Section 7.3 that it is infeasible to return or destroy all PHI.

7.2 Termination. Either party may immediately terminate this Agreement if it determines that the other has breached a material term of this Agreement. Alternatively, in the non-breaching party's sole discretion, it may provide the other party with written notice of the existence of the material breach and afford thirty (30) days to cure. In the event the party fails to cure the material breach within such time period, the non-breaching party may immediately terminate the Agreement. Both parties represent and warrant that neither has any knowledge of the other party's pattern or practice of violating the terms of this Agreement or the HIPAA Standards. In the event a party becomes aware of the other party's pattern or practice of materially breaching the Agreement, it shall provide an opportunity to cure, and if cure is

unsuccessful, terminate this Agreement. If termination is not feasible, the non-breaching party shall report the material breach to the Secretary of HHS or OCR.

7.3 Effect of Termination. Upon termination of this Agreement, Business Associate will recover any PHI relating to the Agreement in the possession of its subcontractors, agents, or representatives. Business Associate will return to Covered Entity or destroy all such PHI plus all other PHI relating to the Agreement in its possession, and will retain no copies. If Business Associate believes that it is not feasible to return or destroy the PHI as described above, Business Associate shall notify Covered Entity in writing. The notification shall include: (i) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate will ensure that any and all protections, requirements and restrictions contained in this Agreement will be extended to any PHI retained after the termination of the Agreement, including Subpart C of 45 C.F.R. § 164 with respect to electronic protected health information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

Section 8. Miscellaneous.

8.1 Survival. The respective rights and obligations of the Parties under Sections 6 (Audit and Inspection Rights), 7.3 (Effect of Termination), and 8 (Miscellaneous) will survive termination of the Agreement indefinitely.

8.2 Entire Agreement; Amendments; Waiver. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes any prior business associate agreement. This Agreement may not be modified, nor will any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event will not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The Parties shall amend this Agreement from time to time as necessary to comply with the requirements of the HIPAA Standards. If either Party determines that such an amendment is necessary, the other party shall work in good faith to incorporate the amendment as soon as possible upon receiving notice.

8.3 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the then-current HIPAA Standards. Unless otherwise defined in this Agreement, capitalized terms have the meanings given in the HIPAA Standards.

8.4 Compliance/Civil and Criminal Penalties. Business Associate agrees to comply with the applicable HIPAA Standards, including, but not limited to, the additional requirements of HITECH that relate to privacy and security and that are made applicable with respect to covered entities. Any such HITECH requirements not expressly addressed in this Agreement are hereby incorporated by reference. Business Associate further acknowledges that it is directly liable for civil and criminal penalties for violations of the HIPAA Standards, as specified in Sections 13401(b) (security violations) and 13404(c) (privacy violations) of HITECH.

8.5 No Third Party Beneficiaries. Except as may be provided in Section 4, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.6 Notices. Any notice to be given under this Agreement to a Party shall be made via U.S. Mail, commercial courier or hand delivery to such Party at its address given below, and/or via facsimile to the facsimile number listed below, or to such other address or facsimile number as shall hereafter be specified by notice from the Party. Any such notice shall be deemed given when so delivered to or received at the proper address.

If to Business Associate, to:	If to Covered Entity to:
_____	_____
_____	_____
_____	_____
Attention: _____	Attention: _____
Phone:_____	Phone: _____
Fax: _____	Fax: _____

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its name and on its behalf as of _____ (the "Effective Date").

BUSINESS ASSOCIATE	**COVERED ENTITY**
_____	_____
By: _____	By:_____
Print Name:_____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____