

**BUSINESS ASSOCIATE AGREEMENT
BY AND BETWEEN
AND
THE CABINET FOR HEALTH AND FAMILY SERVICES,
DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL &
INTELLECTUAL DISABILITIES**

This Business Associate Agreement ("Agreement") effective on **July 1, 2013** ("Effective Date") is entered into by and between **Transformations** (the "Business Associate") and the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental & Intellectual Disabilities (the "Covered Entity").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby the Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of the Covered Entity as defined in the HIPAA Privacy Rule; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement; and

WHEREAS, Business Associate agrees to collect and destroy any and all recyclable material produced by the Covered Entity, and is to assume responsibility for these documents upon receipt; and

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, terms used in this Agreement shall have the same meaning as those terms set forth in the HIPAA Privacy Rule.

The term "Arrangement Agreement" means the Master Contract entered into between the Covered Entity and the Business Associate on July 1, 2013.

II. AMENDMENT TO ARRANGEMENT AGREEMENT.

The Parties have a prior Arrangement Agreement under which the Business Associate regularly uses and/or discloses protected health information in its performance of services for the Covered Entity. The Parties intend this Agreement to be an Amendment or Addendum to the Arrangement Agreement executed by the Parties for services involving the use, creation, or transmission of protected health information.

III. COORDINATION WITH HIPAA PRIVACY RULE

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule in effect at the time shall control. Where provisions of this Agreement are different than those mandated in the HIPAA privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The Parties agree that, in the event that any documentation of the arrangement pursuant to which the Business Associate provides services to the Covered Entity contains provisions relating to the use or disclosure of Protected Health Information, which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding the Business Associate's use and disclosure of Protected Health Information.

IV. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate shall use or disclose any protected health information solely as permitted or required by this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or as required by law.

(b) Business Associate shall ensure that its agents, including a subcontractor, to whom it provides protected health information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement;

(c) Business Associate shall implement appropriate safeguards to prevent use or disclosure of protected health information other than as permitted or required by this Agreement;

(d) Business Associate shall permit the Secretary of Health and Human Services to audit Business Associate's records and practices related to use and disclosure of protected health information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule;

(e) Business Associate shall report to Covered Entity any use or disclosure of protected health information which is not in compliance with the terms of this Agreement of which it becomes aware; and

(f) 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.

V. AVAILABILITY OF PROTECTED HEALTH INFORMATION

(a) Business Associate shall at the request of Covered Entity, provide access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual, in a time and manner sufficient to permit Covered Entity to comply with the requirements of 45 CFR §164.524.

(b) Business Associate shall at the request of Covered Entity or an individual, make any amendment(s) to protected health information in a designated record set that are directed by or agreed to by Covered Entity, in a time and manner sufficient to permit Covered Entity to comply with the requirements of 45 CFR §164.526.

(c) Business Associate shall document disclosures of protected health information and information related to such disclosures in a manner sufficient 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 CFR §164.528 and provide such documentation to Covered Entity or an individual as directed by Covered Entity.

VI. OBLIGATIONS OF THE COVERED ENTITY

(a) Covered Entity shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of the protected health information, and the Business Associate shall abide by any such limitation(s).

(b) Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by an individual to use or disclosure of protected health information, to the extent that such changes may affect the Business Associate's use or disclosure of the protected health information, and the Business Associate shall abide by any such changes or revocations.

(c) Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of protected health information that the Covered entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the vendor's use or disclosure of the protected health information, and the Business Associate shall abide by any such restrictions.

(d) Covered Entity shall not request the 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, except that the Covered Entity may use or disclose protected health information as permitted by the Arrangement Agreement, for data aggregation or management, and administrative activities of the Business Associate.

VII. TERMINATION

(a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the protected health information provided by the Covered Entity to the Business Associate, or created or received by the 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 the protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for cause. Upon the Covered Entity's knowledge of a material breach by the Business Associate, the Covered Entity shall:

(i) Have the right to immediately terminate this Agreement; or

(ii) Provide an opportunity for the Business Associate to cure the breach or end the violation or, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement and the Arrangement Agreement.

(c) Cure. If the Covered Entity provides the Business Associate with an opportunity to cure the material breach this Agreement, the Business Associate shall have thirty (30) days from the date of the notice from the Covered Entity to cure the violation, as set forth in the Agreement, or if there is no such provision to cure, then within. If such violation is not cured within the time period set forth in this Agreement, the Covered Entity may declare a material breach of the Agreement and terminate the Agreement or, if not feasible to terminate the Agreement, report the problem to the Secretary of the United States' Department for Health and Human Services, as set forth in 45 CFR §164.522(e)(1)(ii)(B).

(d) Return or destruction of protected health information. At termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, Business Associate shall:

(i) If feasible, return or destroy all protected health information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. Business Associate shall only destroy protected health information with the written approval of Covered Entity. After return or destruction, Business Associate shall retain no copies of such information.

- (iii) If return or destruction is not feasible, Business Associate will provide Covered Entity with documentation explaining the reason that it is not feasible. If the protected health information is not returned or destroyed, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible.

VIII. MISCELLANEOUS

(a) **Scope.** All protected health information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to the Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

(b) **Survival.** The obligations of the Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the Parties, and shall continue to bind the Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

(c) **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that this Agreement will be automatically amended to conform to any changes in the Privacy Rule as is necessary for the Covered Entity to comply with the current requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(d) **Assignment.** No Party may assign its respective rights and obligations under this Agreement without prior written consent of the other Party.

(e) **Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

(f) **No Rights in Third Parties.** Except as expressly stated herein or the HIPAA Privacy Rule, the Parties to this Agreement do not intend to create any rights in any third parties.

(g) **Governing Law.** This Agreement will be governed by the laws of the State of Kentucky.

(h) **Interpretation.** Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy Rule.

(i) **No Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any

continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

(j) Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

(k) Notice. Any notification required in this Agreement shall be in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

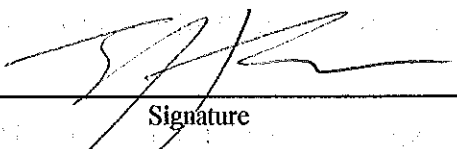
(l) Indemnity. Business Associate agrees to indemnify and hold harmless the Covered Entity and any agency, affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of protected health information or other breach of this Agreement by the Business Associate or any subcontractor, agent, person or entity under the Business Associate's control.

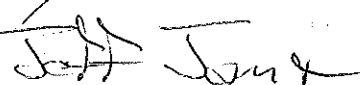
(m) Headings. The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

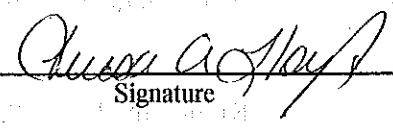
Cabinet for Health and Family Services
Department for Behavioral Health,
Developmental and Intellectual
Disabilities
(The Covered Entity):

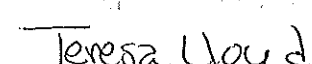
Transformations
(The Business Associate):



Signature


Print Name

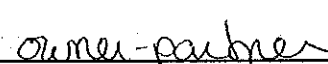


Signature


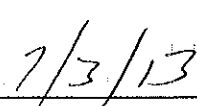
Print Name



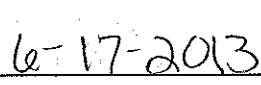
Title



Title

Date: 

7/3/13

Date: 

6-17-2013