

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement, (“Agreement”), effective \_\_\_\_\_ (“Effective Date”) is entered into by and between **EASTER SEALS FLORIDA, INC.** (the “Covered Entity”) and \_\_\_\_\_ (the “Business Associate”).

The Covered Entity may grant to the Business Associate access to Protected Health Information (as defined under 45 C.F.R. 164.501). Both parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (the “Standards”). This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by, created by or received by the Business Associate from or on behalf of the Covered Entity will be handled between the Business Associate and the Covered Entity and with third parties during the term of the Agreement. The parties agree as follows:

### **1.0 Permitted Uses and Disclosures of Protected Health Information**

1.1 *Services:* Pursuant to the Agreement, Business Associate provides services for the Covered Entity that may provide the Business Associate with access to Protected Health Information. Except as otherwise specified herein, the Business Associate may make any and all uses of Protected Health Information necessary to perform its duties and obligations under the Agreement. All other uses not authorized by this Agreement are prohibited. Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only to its employees, subcontractors and agents as directed by the Covered Entity or as otherwise permitted by the terms of this Agreement. The Business Associate will use or disclose only the minimum necessary Protected Health Information in performance of its services.

1.2 *Business activities of the Business Associate:* Unless otherwise limited herein, the Business Associate may use and disclose the Protected Health Information in its possession for its proper management and administration and to fulfill its present or future legal responsibilities provided such uses are permitted under state and federal confidentiality laws. The Business Associate represents to the Covered Entity that (a) any disclosure it makes will be required under applicable laws, or (b) the Business Associate will obtain reasonable written assurances from any person to whom the Protected Health Information will be disclosed that (i) the Protected Health Information 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, and (ii) the person will notify the Business Associate within three (3) business days of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached. The Business Associate will notify the Covered Entity within three (3) business days of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

1.3 *Disclosure by Business Associate:* The Business Associate will not use or disclose any Protected Health Information in a manner (i) inconsistent with the Covered Entity’s obligations as set forth in the Standards, or (ii) that would violate the Standards if disclosed or used in such a manner by the Covered Entity.

1.4 *De-Identification:* The Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of applicable law as provided for in 42 C.F.R. 164.514(b) and the Business Associate maintains such documentation as required by applicable law, as provided for in 42 C.F.R. 164.514(b). The Business Associate and the Covered Entity understand that properly de-identified information is not “Protected Health Information” under the terms of this Agreement.

## **2.0 Responsibilities of the Parties With Respect to Protected Health Information**

2.1 *Responsibilities of the Business Associate:* With regard to its use and/or disclosure of Protected Health Information, the Business Associate hereby agrees to abide by all applicable state and federal laws regarding the privacy and security of individually identifiable health information, including without limitation Protected Health Information, and to do the following:

- a. use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law;
- b. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, in putting systems in place to secure and prevent use or disclosure of protected health information other than as provided by the Agreement;
- c. report to the Designated Privacy Officer (as defined under 45 C.F.R. 164.530(a)(1)) of the Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which the Business Associate becomes aware within 5 (five) days of the Business Associate’s discovery of such unauthorized use and/or disclosure;
- d. report to the Covered Entity within ten (10) days of a request by the Covered Entity, all disclosures of Protected Health Information to a third party for a purpose other than Treatment, Health Care Operations or Payment (each as defined in the Standards). The report will identify (i) the subject of the Protected Health Information (i.e., the patient name or identifier); (ii) the Protected Health Information disclosed; and (iii) the purpose of the disclosure in accordance with the accounting requirements of 45 C.F.R. 164.528.
- e. establish procedures for mitigating any deleterious effects from any improper use and/or disclosure of Protected Health Information that the Business Associate reports to the Covered Entity;
- f. use commercially reasonable efforts to maintain the security of Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information;

- g. require all of its subcontractors and agents that receive, use or have access to Protected Health Information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Business Associate;
- h. make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the Department of Health and Human Services (“DHHS”) for purposes of determining the Covered Entity’s compliance with the privacy regulation, subject to attorney-client and other applicable privileges;
- i. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy covered entity’s obligations under 45 C.F.R. 164.526;
- j. upon prior written request, make available during normal business hours at Business Associate’s offices all records, books, agreements, policies and procedures related to the use and/or disclosure of Protected Health Information to the Covered Entity within 15 days for purposes of enabling the Covered Entity to determine the Business Associate’s compliance with the terms of this Agreement;
- k. within 45 days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as requested to permit the Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual’s Protected Health Information in accordance with 45 C.F.R. 164.528; and
- l. disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

2.2 *Responsibilities of the Covered Entity:* With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Covered Entity hereby agrees:

- a. to inform the Business Associate of any changes in the form of notice of privacy practices (the “Notice”) that the Covered Entity provides to individuals pursuant to 45 C.F.R. 164.520, and to provide the Business Associate a copy of the Notice currently in use;
- b. to inform the Business Associate of any changes in, or withdrawal of, any authorization provided to the Covered Entity by individuals pursuant to 45 C.F.R. 164.508;

- c. to notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under the Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. 164.522 agreed to by the Covered Entity; and
- d. that Business Associate may make any use and/or disclosure of Protected Health Information under 45 C.F.R. 164.512 except uses or disclosures for research are not permitted without prior approval by the Covered Entity.

### **3.0 Covenants**

#### **3.1 *Mutual Covenants:*** Each party covenants:

- a. that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each party, respectively, by contract or otherwise, sufficient to enable each party to fully comply with all provisions of this Agreement including, without limitation, the requirement that all modifications or limitations that the Covered Entity has agreed to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the use and disclosures that are otherwise permitted under the Standards will be communicated to the Business Associate, in writing, and in a timely fashion; and
- b. that it will reasonably cooperate with the other party in the performance of the mutual obligations under this Agreement.

### **4.0 Terms and Terminations**

4.1 *Term:* This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section.

4.2 *Termination:* As provided for under 45 C.F.R. 164.504 (e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any related Agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may choose to (i) provide the Business Associate with 15 days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved in 15 days, Business Associate must cure said breach to the satisfaction of the Covered Entity within 30 days. Failure to cure in the manner set forth in this paragraph is grounds for immediate termination of this Agreement.

4.3 *Effect of termination:* Upon the event of termination pursuant to this section, Business Associate agrees to return or destroy all Protected Health Information pursuant to 45 C.F.R 164.504(e)(2)(ii)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any Protected Health Information in possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said Protected Health Information, the Business Associate will notify the Covered Entity in writing. Said notification shall include (1) a statement the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession or in the possession of its subcontractors or agents and (2) the specific reasons for such determination. Business Associate further agrees to extend or require its subcontractors or agents to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use on its subcontractors' or agents' use and/or disclosure of any Protected Health Information retained after termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

## **5.0 Indemnification**

5.1 *Indemnification:* The parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from on in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the privacy regulations, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed by any third party which results from the indemnifying party's breach hereunder. The parties' obligation to indemnify any indemnified party shall survive the expiration or termination of this Agreement for any reason.

## **6.0 Miscellaneous**

6.1 *Survival:* The respective rights and obligations of Business Associate and Covered Entity with respect to Protected Health Information the Business Associate retains in accordance with Section 2.0 of this Agreement, shall survive termination of this Agreement indefinitely.

6.2 *Amendments; waiver:* This Agreement may not be modified; nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy to subsequent events.

6.3 *No third party beneficiaries:* Nothing expressed 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 or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

6.4 *Notices:* Any notices to be given hereunder to a party shall be made via U.S. mail or express courier to such party's address given below and/or via facsimile to the facsimile telephone number listed below.

If to Covered Entity, to:

Easter Seals Florida, Inc.  
2010 Crosby Way  
Winter Park, FL 32792  
(407) 629-7881 - Telephone  
(407) 629-4754- Facsimile

If to Business Associate, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ - Telephone  
\_\_\_\_\_ - Facsimile

6.5 *Change of address:* Each party named above may change its address and that of its representatives for notice by giving notice thereof in the manner provided above.

6.6 *Counterparts and facsimiles:* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

6.7 *Governing law:* The validity performance construction and effect of this Agreement shall be governed by the substantive laws of the State of Florida without regard to the provisions of choice of law thereunder.

### **Limitation of Liability**

*Neither party shall be liable to the other party for any incidental, consequential, special or punitive damages of any kind or nature, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, even if the other party has been advised of the possibility of such damages.*

**In witness whereof**, each of the undersigned has caused this Agreement to be duly executed in its name and in its behalf effective as of \_\_\_\_\_.

**Easter Seals Florida, Inc.**

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

Print : Robert Porcaro

Title: Chief Operating Officer

Date: \_\_\_\_\_

**Business Associate**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_