

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made and entered into this ____ day of ____, 2014 by and between Tri-Valley Developmental Services, Inc. CDDO (CDDO) ("Covered Entity"), a Community Disability Developmental Organization for Intellectual Disability Services (I/DD), whose business address is 521 W. 35th, P.O. Box 518, Chanute, KS 66720, and ____ ("Business Associate"), a ____ firm, whose business address is _____. The Business Associate shall perform business functions or activities on the Client's behalf involving the use and/or disclosure of PHI for the purpose of _____. The Business Associate, therefore, agrees to the following terms and conditions set forth in this agreement.

1. **Definitions.** Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the Privacy Rule and the Security Rule of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA): Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Subcontractor, and Use. A change to HIPAA which modifies any defined HIPAA term, or which alters the regulatory citation for the definition shall be deemed incorporated into this agreement.
 - a. **Breach.** "Breach shall mean the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI and subject to the exceptions set forth in 45 CFR § 164.402.
 - b. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean ____.
 - c. **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean Tri-Valley Developmental Services, inc. CDDO.
 - d. **EDI Rule.** "EDI Rule" shall mean the Standards for Electronic Transactions as set forth at 45 C.F.R. 160, Subpart A and 162, Subpart A and I through R.
 - e. **Electronic Protected Health Information (EPHI).** "Electronic Protected Health Information" and/or EPHI shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103 and shall include, without limitation, any EPHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity.
 - f. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part § 160 and Part § 164.
 - g. **HITECH.** "HITECH" means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

- h. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part § 160 and Part §164, Subparts A and E and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.
- i. **Protected Health Information (PHI).** "Protected Health information" and/or PHI shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- j. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- k. **Security Rule.** "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, subparts A and C and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.
- l. **Services Agreement.** "Services Agreement" shall mean the underlying agreement(s) that outline the terms of the services that Business Associate agrees to provide to Covered Entity and that fall within the functions, activities or services described in the definition of "Business Associate" at 45 CFR §160.103.
- m. **Unsecured Protected Health Information (UPHI).** "Unsecured Protected Health Information" and/or UPHI shall have the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

2. **Obligations and Activities of Business Associate.**

Business Associate agrees to:

- a. Designate one liaison to serve as a single point of contact for Covered Entity. The Business Associate also agrees to designate a custodian for the PHI who is responsible for observance of all conditions of use. If custodian is transferred, the Covered Entity will be notified within 10 days.
- b. Only use or disclose Protected Health Information as permitted or required by this Agreement or as Required By Law.
- c. Implement appropriate administrative, physical, and technical safeguards that comply with Subpart C of 45 CFR Part §164 with respect to electronic protected health information and to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- d. Perform any transaction for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its function on behalf of Covered Entity.

Business Associate also agrees that it will comply with applicable EDI standards no later than the date that the EDI Rule becomes effective with regard to Covered Entity.

Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification subtitle of HIPAA, no later than the date such provision become effective with regard to Covered Entity.

- e. Report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate also agrees to report to Covered Entity any security incident, including all data breaches whether internal or external, related to Protected Health Information of which Business Associate becomes aware.

Under such circumstances, the Business Associate will provide written notification within 5 business days of becoming aware of such use or disclosure. In the case of a breach, the Business Associate will notify the Covered Entity immediately following the discovery of said breach. The notice shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been accessed, acquired, or disclosed during the breach.

- f. Ensure, in accordance with 45 CFR § 164.502(e)(1)(ii) and §164.308(b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information
- g. Provide access, at the request of Covered Entity and during normal business hours, 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 CFR [164.524](#), provided that Covered Entity delivers to Business Associate a written notice at least five (5) business days in advance of requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information in a Designated Record Set of Covered Entity.
- h. Make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR [§164.526](#), at the request of Covered Entity or an Individual or to take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. The Business Associate shall have five (5) business days after receipt to incorporate the amendment to the designated record set. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Entity.
- i. Make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered

Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule or Security Rule, unless otherwise protected or prohibited from discovery or disclosure by law. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.

- j. Maintain necessary and sufficient documentation of disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of such disclosures, in accordance with 45 CFR §164.528.

On request of Covered Entity, Business Associate agrees to provide documentation made in accordance with this Agreement 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 C.F.R. §164.528. Business Associate shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than five (5) business days after Business Associate's receipt of such request. Any fee assessed for access to PHI in paper format shall be a reasonable, cost based fee consistent with the requirements of 45 CFR §164.524.

- k. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part §164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.
- l. Indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damage including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by the Business Associate of its obligation under this agreement. Business Associate acknowledges and stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this agreement would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief together with the right to recover from Business Associate costs, including reasonable attorney's fees, for any such breach of the terms and conditions of this agreement.
- m. Acknowledges that Business Associate has no ownership rights related to the PHI.

3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or

disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.

- b. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary rule of the Privacy standards. Business Associate and its agents or subcontractors, if any shall only requires, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary (HITECH 13405).
- c. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part §164 if done by Covered Entity except for specific uses and disclosures set forth below.
- d. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §[164.504\(e\)\(2\)\(i\)\(B\)](#).
- f. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §[164.502\(j\)\(1\)](#).

4. Obligations of Covered Entity.

- a. Covered Entity shall designate one liaison to serve as the single point of contact for the Business Associate.
- b. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §[164.520](#), to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45

CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

- e. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by the Covered Entity, unless the Business Associate will use or disclose protected health information for data aggregation or management and administration and legal responsibilities of the Business Associate.

5. Term and Termination.

- a. Term. The Term of this Agreement shall be effective as of this ___ day of ___, 2014 and shall continue in force unless otherwise terminated herein, and shall terminate as to each Underlying Agreement when all PHI provided to Business Associate or created or received by Business Associate on behalf of Covered Entity pursuant to Underlying Agreement, is destroyed or returned to Covered Entity. Despite such termination, herein Business Associate agrees to protect any remaining PHI in accordance with the providers herein and applicable HIPAA, state or federal law.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Termination without Cause. This Agreement can be terminated without cause by the Covered Entity with thirty (30) days written notice; provided, that the Business Associate may continue to use the PHI for a reasonable period of time following such termination in order to perform any of its remaining obligations under the Contract.
- d. Obligations of Business Associate Upon Termination.
 - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or, if agreed to by covered entity, destroy all Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. If the protected health information is destroyed by the Business Associate, said Business Associate must provide the covered entity with proof of destruction.
 - 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to

Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule or Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5(c) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule or the Security Rule.
- e. Subcontracting. Business Associate may not subcontract any services or assign any rights, nor may it delegate its duties, under this agreement without the express written consent of the Covered Entity. If consent is given, the Covered Entity has the right to review terms of the agreements contracted between the Business Associate and its subcontractors as they relate to the use and disclosure of PHI belonging to the Covered Entity.
- f. Independent Contractors. The parties are independent contractors and nothing in this agreement shall be deemed to make them partners or joint ventures.
- g. Security and Privacy Law. Business Associate will comply with all appropriate federal and state security and privacy laws, to the extent that such laws apply to Business Associate or are more protective of individual privacy than are the HIPAA laws.
- h. Required Notices. All notices which are required or permitted to be given pursuant to this agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by registered or certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party indicated below:

Business Associate	Covered Entity
	Tri-Valley Developmental Services, Inc.
	CDDO
Attn:	Attn: <u>Kathy Brennon</u>

P.O. Box 518
Chanute, KS 66720
Fax: 620-431-4191

Fax:

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered to transmit by electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice. If any provision of this agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

- i. Covered Entity agrees to extent permitted by law to hold the Business Associate harmless and to assume responsibility for any and all claims, demands, and causes to action of every kind and character arising out of or in connection with acts of omission by the Covered Entity under this agreement.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement. Facsimile signatures shall be accepted and enforceable in lieu of original signatures.

This agreement contains the entire understanding between the parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any Services Agreement. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy and any waiver shall not waive any subsequent right, obligation or default.

APPROVED AND ACCEPTED BY:

____ (Business Associate)

Signature & Title

Date

Tri-Valley Developmental Services, Inc. (Covered Entity)

Kathy Brennon, CDDO Director

Date