

## ***HIPAA Business Associate Agreement***

This BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into by and between DIVERSIFIED HEALTH CARE MANAGEMENT, INC. (the "Business Associate"), and \_\_\_\_\_ (the "Covered Entity") (collectively referred to herein as the "Parties" or individually as a "Party"), to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), and is made a part of that certain Contract for Employment as Independent Contractor dated April 1, 2013 (the "Service Agreement") between the Parties.

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in the Service Agreement pursuant to which Business Associate may be considered a "Business Associate" of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as codified at 42 U.S.C. § 1320d ("HIPAA"), including all pertinent regulations set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations ("C.F.R.") issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009, as codified at 42 U.S.C.A. prec. § 17901 (the "HITECH Act"), part of the American Recovery and Reinvestment Act of 2009 ("ARRA"), 42 U.S.C. §§ 17921, 17931-17932 and 17934; and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate involves the use and/or disclosure of Protected Health Information ("PHI") as that term is defined in 45 C.F. R. 160.103; and

WHEREAS, Covered Entity and Business Associate wish to ensure compliance with the requirements of HIPAA, its implementing regulations, the HITECH Act and any current and future regulations promulgated under HIPAA or HITECH Act (HIPAA, HITECH Act and any current and future regulations promulgated under either are hereinafter referred to as the "Regulations").

NOW THEREFORE, in consideration of the mutual covenants contained herein which are made a contractual part hereof and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Definitions.** Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Regulations, including without limitation, the Privacy Rule, as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as amended by the HITECH Act and as may otherwise be amended from time to time.

### **2. Permitted Uses and Disclosures by Business Associate.**

Except as otherwise limited in the Service Agreement and/or this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity, as follows:

- a Permitted Uses. Except as otherwise limited in this Agreement or as Required by Law, Business Associate may use PHI as necessary to carry out its obligations under the Service Agreement, and the proper management and administration of Business Associate or to carry out other legal responsibilities of Business Associate.
- b Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B), to the extent specifically required under the Service Agreement;
- c Re-creation of Information. Except as otherwise limited in this Agreement, Business Associate may use PHI received or created pursuant to this Agreement to create information that is not individually identifiable health information ("De-identified Information"), consistent with the standards set forth at 45 C.F.R. § 164.514.
- d Permitted Disclosures. Business Associate shall not disclose PHI except for the purpose of performing the Business Associate's obligations under the Service Agreement or this Agreement. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are consistent with Regulations or otherwise Required By Law, or Business Associate obtains reasonable written



assurances from the person to whom the PHI is disclosed that (1) the PHI will be held confidentially as provided pursuant to this Agreement and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (2) Business Associate will be notified within 24 hours of the discovery of any breach or suspected breach of the confidentiality of the PHI.

### **3. Prohibited Uses and Disclosures by Business Associate.**

- a Business Associate shall not use or disclose PHI for marketing purposes or any other purpose not permitted by the Regulations, this Agreement or the Service Agreement.
- b Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the individual patient has requested that no claim be submitted and has paid out of pocket in full for the health care item or service to which the PHI relates as required by 42 U.S.C. § 17935(a).
- c Business Associate shall not directly or indirectly receive remuneration in exchange for PHI; provided, however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Service Agreement.

### **4. Obligations and Activities of Business Associate. Business Associate covenants and agrees to the following:**

- a Compliance. Business Associate shall ensure full compliance with applicable requirements of the Regulations.
- b Appropriate Safeguards. Business Associate shall implement and maintain appropriate safeguards to prevent the use, disclosure or availability of PHI or electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity, including, but not limited to, administrative, physical and technical safeguards that appropriately protect the confidentiality, security, integrity and availability of the PHI. Business Associate shall comply with the policies and procedures and documentation requirements of the Regulations and other applicable federal and state laws. In the event Business Associate creates, maintains, receives or transmits electronic PHI on behalf of Covered Entity, Business Associate shall implement the safeguards required above with respect to electronic PHI. Upon request, Business Associate shall furnish copies of its policies and procedures outlining all such safeguards to Covered Entity, such policies and procedures to be provided within five (5) days of Covered Entity's request.
- c Designated Compliance Officer. Business Associate shall designate an individual to serve as the Compliance Officer responsible for supervising the security and privacy safeguards, policies, and procedures, including but not limited to, administrative, physical and technical safeguards employed within the organization to prevent unauthorized use, disclosure or access to PHI maintained by Business Associate on behalf of Covered Entity. As of the Effective Date of this Agreement, the designated Security Officer is Michael H. Beaty, who may be contacted by calling 907-770-2302 or emailing mike.beaty@dhcmak.com.
- d Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing, such writing to be maintained on Business Associate's premises and available to Covered Entity upon request, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. This provision shall not be deemed to provide Business Associate with a right to assign or subcontract its responsibilities.



e Duties of Business Associate Involving Breach or Unauthorized Access, Use or Disclosure of PHI.

- 1 Discovery of Breaches. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to the Business Associate, or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer or other agent of Business Associate (determined in accordance with state common law of agency).
- 2 Notification. Business Associate shall notify the designated Privacy Official of Covered Entity within forty-eight (48) hours after discovery of any access, use or disclosure of PHI not permitted by this Agreement or the Service Agreement, any security incident involving PHI, and any Breach of Unsecured PHI of which Business Associate becomes aware and any actual or suspected use or disclosure of data exposed through such breach or incident. Business Associate shall take any prompt corrective action to cure any such deficiencies as required by this Agreement and applicable federal and state laws and regulations.
- 3 Reporting Improper Access, Use or Disclosure. Business Associate shall provide the following information to Covered Entity within five (5) business days of discovery of a Breach except when, despite all reasonable efforts of Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances, Business Associate shall provide to Covered Entity the following information as soon as possible and without unreasonable delay, but in no event later than fifteen (15) calendar days from the date of discovery of a Breach:
  - i the date of the breach;
  - ii the date of the discovery of the breach;
  - iii a general description of events leading up to and surrounding the breach;
  - iv a description of the types of unsecured PHI that were involved;
  - v a listing of the identification of each individual and/or class of individuals whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed; and
  - vi any other details necessary to complete an assessment of the risk of harm to the individual.
  - vii Business Associate shall provide the designated Privacy Official of Covered Entity with updates of information concerning the details of such Breach and the final results of its Risk Assessment as required in Section 4.e.(4) as needed to ensure that such information remains current.
- 4 Risk Assessment and Investigation. Business Associate shall perform an appropriate risk assessment immediately following the discovery of any unauthorized access, use or disclosure of PHI to determine whether use, access, or disclosure is one that “poses a significant risk of financial, reputation or other harm to the individual.” In performing the Risk Assessment, Business Associate should consider a combination of factors such as: (a) who impermissibly used the PHI or to whom the PHI was impermissibly disclosed; (b) was the impermissibly disclosed PHI returned prior to it being accessed for an improper purpose; and (c) the type and amount of PHI involved in the impermissible use or disclosure. Upon the Covered Entity’s request, Business Associate shall permit a Covered Entity staff member to participate in the investigation.
  - i The results, including all documentation and reports produced during such Risk Assessment and Investigation, shall be provided to Covered Entity in writing, without unreasonable delay and in no event later than thirty (30) days from the date of discovery of the unauthorized access, use or disclosure. In addition to the Risk Assessment conducted by the Business Associate, Covered Entity reserves the right to conduct its own investigation of any unauthorized access, use or disclosure of PHI occurring at any facility, site or location of Business Associate, its agents or



subcontractors or through any systems under the control of the Business Associate, its agents or subcontractors. Business Associate shall cooperate with Covered Entity to conduct such investigation. Covered Entity agrees to provide advance notice of such investigation, to protect the confidentiality of and not disclose any confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such investigation.

- 5 Mitigation of Harm. In the event of a Breach of Unsecured PHI, Business Associate agrees to mitigate, any harmful effects of a system compromise or other improper use or disclosure of PHI maintained by Business Associate, such as promptly obtaining reasonable assurance from the recipient that the information will not be further used or disclosed in a confidentiality agreement or will be destroyed. Prior to implementing any measures to mitigate the effects of Business Associate's Breach, Business Associate shall submit a Mitigation Plan outlining all proposed mitigation measures to Covered Entity, and shall implement such measures as are approved or supplemented by Covered Entity.
  - 6 Notification to Individual. It is the sole responsibility of the Covered Entity to notify individual patients/customers of any Breach of PHI. At no time, is Business Associate to contact or speak directly with any of Covered Entity's individual patients/customers who are the subject of any Breach of PHI. Any inquiries with respect to the Breach shall be directed to the Covered Entity's Privacy Officer. Business Associate shall cooperate with Covered Entity as necessary to provide such notification and any details pertaining to any Breach of PHI.
  - 7 Cooperation with Law Enforcement. Business Associate shall cooperate with Covered Entity in the event law enforcement officials institute an investigation that involves a Breach of PHI under this Agreement.
  - 8 Notification to Media. For a Breach of PHI involving more than 500 individuals, Covered Entity shall notify the media and appropriate law enforcement and federal and State agencies as required by the HITECH Act, 45 C.F.R. 164.406. At no time is Business Associate to contact or speak directly with the media without the prior authorization of Covered Entity. Business Associate shall cooperate with Covered Entity as necessary to provide such notification to the media.
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- f Access to PHI. Upon notice and prior written request from Covered Entity, Business Associate agrees to provide access to PHI to Covered Entity, or to provide access to PHI in a Designated Record Set to an Individual pursuant to a customer's right of access to obtain a copy of his or her PHI under 45 C.F.R. §164.524.
  - g Governmental Access to Records. Business Associate agrees to make available all internal practices, books, records, agreements, policies and procedures relating to the use of and disclosure of PHI, created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or to the Secretary of the U.S. Department of Health and Human Services or the Secretary's designee.
  - h Minimum Necessary. Business Associate shall request, use and disclose only the minimum amount of PHI necessary to accomplish the purposes of the request, use or disclosure required by the Service Agreement.
  - i Amendments of PHI. Business Associate agrees to provide PHI to Covered Entity for amendment and shall also incorporate any such amendments in the PHI maintained by Business Associate as required by 45 C.F.R. § 164.526.
  - j Accounting Rights. Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Regulations. Business Associate agrees to furnish upon request an accounting of uses and disclosures of PHI, to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, unless the Regulations allow for a shorter period. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization or a copy of the written request for disclosure.



## **5. Term/Continuing Obligations/Termination.**

- a **Term.** The Obligations of Business Associate set forth herein shall commence on the Effective Date and shall terminate when the Service Agreement terminates and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, the terms of this Agreement are extended to cover such information and survive termination of this Agreement.
- b **Termination for Cause.** Upon Covered Entity's knowledge of a breach by Business Associate of any of the terms of this Agreement, Covered Entity may terminate this Agreement and sever any or all business relationships with Business Associate, including the termination of the Service Agreement and any and all Agreements with Business Associate if the breach remains uncured for more than fifteen (15) days after Covered Entity gives written notice to Business Associate of the breach. The effective date of such termination will be the 16<sup>th</sup> day from the date of the written notice of breach.
- c **Immediate Termination.** In the event Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate this Agreement, and sever all business relationships with Business Associate, including the termination of the Service Agreement and any and all Agreements with Business Associate. Covered Entity may report such violation to the Secretary.
- d **Effect of Termination.**
  - 1 Except as provided in this Section 5.d. of this Agreement, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - 2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

The provisions of this Section 5.d. shall survive termination of this Agreement.

## **6. Obligations of Covered Entity to Inform Business Associate of Privacy Practices and Individual Restrictions.**

- a **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.406, as well as any changes to such notice. Any notices given hereunder shall be in writing and addresses as follows:

Diversified Health Care Management, Inc.  
P.O. Box 241769  
Anchorage, AK 99524-1769
- b **Changes in Permitted Uses.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- c **Restrictions on Use.** Covered Entity shall notify Business Entity of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.406





## **7. Indemnification.**

- a **Business Associate Indemnity.** Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective parent corporation and subsidiaries, their directors, officers, subcontractors, agents, servants and employees (collectively, the “Covered Entity Indemnitees”) to the extent any claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, reasonable attorney’s fees, expert witness fees, and costs of investigation, litigation or dispute resolution to which the Covered Entity Indemnitees may become subject as the result of any: (i) breach of this Agreement by Business Associate; (ii) failure of Business Associate to perform its obligations hereunder; (iii) negligence or legal fault of Business Associate, its directors, officers, agents or employees; or (iv) violation of the Regulations by Business Associate.
- b **Covered Entity Indemnity.** Covered Entity hereby agrees to indemnify and hold harmless Business Associate and its respective parent corporation and subsidiaries, their directors, officers, subcontractors, agents, servants and employees (collectively, the “Business Associate Indemnitees”) to the extent any claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, reasonable attorney’s fees, expert witness fees, and costs of investigation, litigation or dispute resolution to which the Business Associate Indemnitees may become subject as the result of any: (i) breach of this Agreement by Covered Entity; (ii) failure of Covered Entity to perform its obligations hereunder; (iii) negligence or legal fault of Covered Entity, its directors, officers, agents or employees; or (iv) violation of the Regulations by Covered Entity.

## **8. General Provisions.**

- a **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either Covered Entity or Business Associate to comply with all federal, state and local laws and regulations, including, but not limited to, the requirements of the Privacy Rule, HIPAA and the HITECH Act. This Agreement shall be changed, modified or amended only by an instrument in writing signed by a duly authorized representative of each of the Parties, effective as of the date stipulated therein and attached hereto.
- b **Survival.** The respective rights and obligations of Business Associate and Covered Entity set forth in Sections 3, 4, 5.d., 7 and 8 shall survive the termination of this Agreement.
- c **Interpretation.** Should there be any conflict between the language of this Agreement and any other Agreement entered into between the Parties, the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.
- d **Notices.** Any notices required or permitted hereunder shall be sufficiently given if sent by registered or certified mail, postage prepaid, or personally delivered, addressed or delivered to the addresses set forth below in the signatures to this Agreement or to such other addresses as shall be furnished in writing by either party to the other party; and any such notice shall be deemed to have been given, if mailed, as of the date mailed, and, if personally delivered, as of the date delivered. Notices pertaining to unauthorized use or access of PHI or Breaches of PHI should be submitted to the Covered Entity’s Compliance and/or Privacy Officer with contact information of Business Associate’s designated Security Official responsible for investigating such incidents.
- e **Facsimile.** The signature of any party on this Agreement, or any subsequent amendment thereto, transmitted by way of a facsimile machine shall be considered for all purposes as an original signature. Any such faxed Agreement or amendment shall be considered to have the same binding legal effect as an original Agreement or amendment. At the request of any party, the faxed Agreement or amendment shall be re-executed by each signatory party in an original form.
- f **Entire Agreement.** With regard to the subject matter herein, this Agreement supersedes prior or contemporaneous discussions, agreements, understandings, and representations between the Covered Entity and Business Associate.



IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

\_\_\_\_\_  
**COVERED ENTITY**

\_\_\_\_\_  
**Sign**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Name / Title (PLEASE PRINT)**

\_\_\_\_\_  
**Mailing Address**

\_\_\_\_\_  
**City State Zip Code**

\_\_\_\_\_  
**Phone #:**

\_\_\_\_\_  
**Fax #:**

\_\_\_\_\_  
**Email Address**

**Diversified Health Care Management, INC (Diversified)**

**By:** \_\_\_\_\_  
**Joseph E. Beaty, CEO**

**Address:** 4141 B Street  
Suite 401  
Anchorage, AK 99503  
**Phone:** 907- 770-2380  
**Fax:** 907- 770-2341

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