

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) dated [today's date], is entered into by and between The Opportunity Alliance (the “Covered Entity”), and [associate organization] (“Business Associate”), each a “Party” and collectively, the “Parties.”

In the course of providing certain services (the “Services”) to the Covered Entity, the Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, “PHI”) on behalf of Covered Entity. In such case, the Covered Entity is required by law to obtain the assurances below from the Business Associate.

The U.S. Department of Health and Human Services (“HHS”) has enacted requirements regarding the use, disclosure and safeguarding of protected health information by persons providing services to covered entities, including the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and its implementing regulations at 45 C.F.R. Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or “HIPAA Rules”) as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of Division A of the American Recovery and Reinvestment Act of 2009, and its implementing regulations (collectively, “HIPAA and HITECH Rules”).

HIPAA provides, among other things, that a covered entity is permitted to disclose Protected Health Information to a business associate and allow the business associate to obtain and receive Protected Health Information, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the PHI.

THEREFORE, the Parties agree as follows:

I. DEFINITIONS

1.1. Standard definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2. Specific definitions:

- 1.2.1 Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” defined at 45 C.F.R. 160.103.
- 1.2.2 Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” defined at 45 C.F.R. 160.103.
- 1.2.3 HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

II. BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION

2.1 The Business Associate acknowledges that, in receiving, storing, processing or otherwise dealing with any Protected Health Information, it is fully bound by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and regulations issued pursuant thereto (45 C.F.R. Parts 160 and 164);

2.2 The Business Associate acknowledges that if the Business Associate receives, stores, processes, transmits, or otherwise deals with PHI, whether or not recorded, obtained or maintained by a federally assisted alcohol or drug abuse program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment, the Business Associate (aka “Qualified Service Organization”) (i) is fully bound by the Federal regulations governing confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R., Part 2), and (ii) will resist in judicial proceedings any efforts to obtain access to such PHI except as permitted by these regulations; and

2.3 The Parties mutually agree that certain federal and state laws, rules, regulations and accreditation standards impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 C.F.R. 2 *et. seq.*; 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq.*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of the Council on Accreditation or other appropriate accreditation body regarding confidentiality.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

3.1 Business Associate will not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;

3.2 Business Associate will use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;

3.3 Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. 164.410, and any security incident of which it becomes aware, without unreasonable delay and in no case later than thirty (30) days following the discovery of a Breach of such information. Such notice shall include the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the Breach;

3.4 In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure 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;

3.5 The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement;

3.6 To the extent Business Associate holds Protected Health Information in a Designated Record Set, Business Associate will make available to Covered Entity Protected Health Information in a Designated Record Set as necessary to satisfy Covered Entity's obligations to provide individuals access to their Protected Health Information under 45 C.F.R. 164.524;

3.7 To the extent Business Associate holds Protected Health Information in a Designated Record Set, Business Associate will make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to an individual's right to amend his/her records under 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;

3.8 Business Associate expressly recognizes that Covered Entity has certain reporting and Disclosure obligations to the Secretary of the U.S. Department of Health and Human Services and the Individual in case of a Security Breach of unsecured Protected Health Information (as defined in 45 C.F.R. §164.402);

3.9 Business Associate will maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy covered entity's obligations to provide an accounting of disclosures under 45 C.F.R. 164.528;

3.10 To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the HIPAA Privacy Rule, Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

3.11 Business Associate will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services to, for, or on behalf of Covered Entity, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity;

4.2 Except as otherwise limited in this Agreement, Business Associate may, if necessary in carrying out his/her or its responsibility for provision of services to, for or on behalf of Covered Entity, use Protected Health Information for the proper management and

administration of the Business Associate or to carry out the legal responsibilities of the Business Associate;

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate provided Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached;

4.4 Business Associate may use or disclose Protected Health Information as Required By Law;

4.5 Business Associate will not directly or indirectly receive remuneration in exchange for any Protected Health Information, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable Individual. Business Associate will not engage in any communication which might be deemed to be "Marketing" under the HITECH Act. In addition, Business Associate will, pursuant to the HITECH Act and its implementing regulations, comply with all applicable requirements of the Security Rule, contained in 45 C.F.R. 164.308, 164.310, 164.312 and 164.316, at such time as the requirements are applicable to Business Associate;

4.6 If Business Associate violates any Security provision as Required By Law specified in Section 4.1 above, sections 1176 and 1177 of the Social Security Act 42 U.S.C. §§1320d-5, 1320d-6 shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such Security provision; and

4.7 Business Associate agrees to make reasonable efforts to limit uses and disclosures of Protected Health Information to the minimum necessary to accomplish the intended purpose of the use or disclosure.

V. OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;

5.2 Covered entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and

5.3 Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to

abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

VI. TERM AND TERMINATION

6.1 Term. The Term of this Agreement shall be effective as of the date first mentioned above, and unless terminated earlier as provided below, shall terminate when all the Protected Health Information 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 Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section VI.

6.2 Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of this Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

6.3 Obligations of Business Associate Upon Termination. Except as provided below, upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information.

In the event that returning or destroying the Protected Health Information is infeasible, 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 necessary and lawful purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

VII. INSURANCE AND INDEMNIFICATION

7.1 Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, directors, officers, subcontractors, agents or other members of its workforce from any costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including failure to perform its obligations under the Privacy Rule. The Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.

VIII. MISCELLANEOUS

8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

8.3 Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

8.4 No Third Party Beneficiaries. 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 or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.5 Notice. All notices required under this Agreement shall be in writing and shall be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid.

8.6 Severability; Governing Law; Conflict. This Agreement shall be enforced and construed in accordance with the laws of the State of Maine. Jurisdiction of any litigation with respect to this Agreement shall be in Maine, with venue in a court of competent jurisdiction located in Cumberland County. In the event of a conflict between the terms of this Agreement and the terms of any of the Underlying Agreements, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the undersigned Business Associate has caused this Agreement to be executed on its behalf by the undersigned hereunto duly authorized.

[ASSOCIATE ORGANIZATION NAME]

By: _____
[Org. Representative], President

MENTAL HEALTH AGENCY

By: _____
President & CEO