

## **BUSINESS ASSOCIATE AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (“Covered Entity”) and Postal Presort, Inc., d/b/a Postalocity.com (including its affiliates and subsidiaries) (“Business Associate”).

WHEREAS, the parties to this Agreement have a relationship where Covered Entity may provide Business Associate access to Protected Health Information that Business Associate will use to fulfill its contractual obligations to Covered Entity; and

WHEREAS, it is the intent of the parties to comply with the HIPAA Privacy, Security, and Breach Notification Rules; and

WHEREAS, it is the intent of the parties that this Agreement rescinds all prior Business Associate Agreements previously entered into between Covered Entity and Business Associate, and it is the parties’ intent that for any Protected Health Information and/or Electronic Protected Health Information in its possession Business Associate will comply with the following provisions.

THE PARTIES AGREE AS FOLLOWS:

### **1. Definitions**

(a) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

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

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

In the event Business Associate creates, receives, maintains, or transmits Covered Entity’s Protected Health Information, Business Associate agrees to:

(a) Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

(b) Use appropriate safeguards, and comply with the HIPAA Security Rule with respect to Electronic Protected Health Information, to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate will retain

Protected Health Information in accordance with the agreed upon services and its record retention procedures.

(c) 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 by 45 C.F.R. 164.410, and any Security Incident of which it becomes aware; provided, however, the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted, but Unsuccessful Security Incidents, for which further notice to Covered Entity shall be required only upon Covered Entity's written request. Unsuccessful Security Incidents include, but are not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, and unsuccessful log-on attempts, so long as no such incident results in unauthorized access, use, or disclosure of Protected Health Information.

Business Associate must report any use or disclosure that constitutes a Breach within fifteen (15) calendar days of the date the Business Associate becomes aware of the Breach. Business Associate's notification will include the identification of each Individual whose Unsecured Protected Health Information has been or is reasonably believed by Business Associate to have been accessed, acquired, used, or disclosed during the Breach, and any particulars regarding the Breach Covered Entity would need to include in the notification as set forth in 45 C.F.R. 164.404. To the extent commercially practicable, Business Associate will work cooperatively with Covered Entity to mitigate any harmful effect of any use or disclosure not provided for by this Agreement or the Privacy Regulations.

(d) In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate for services provided to Covered Entity agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. Business Associate is expressly authorized to provide a copy of this Agreement to any Subcontractors it uses in its work for Covered Entity for purposes of obtaining the Subcontractor's agreement to the terms and conditions of this Agreement.

(e) To the extent Business Associate has Protected Health Information maintained in a Designated Record Set, make available such information to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524 within ten (10) business days of Business Associate's receipt of a written request from Covered Entity. If an Individual makes a request for access pursuant to 45 C.F.R. 164.524 directly to Business Associate, Business Associate will direct the Individual to Covered Entity.

(f) To the extent Business Associate has Protected Health Information maintained in a Designated Record Set, make any amendment(s) to such information 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 within ten (10) business days of Business Associate's receipt of a written request from Covered Entity. If an Individual makes a request

for amendment pursuant to 45 C.F.R. 164.526 directly to Business Associate, Business Associate will direct the Individual to Covered Entity.

(g) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.528 within ten (10) business days of Business Associate's receipt of a written request from Covered Entity. If an Individual makes a request for accounting pursuant to 45 C.F.R. 164.528 directly to Business Associate, Business Associate will direct the Individual to Covered Entity.

(h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule pursuant to the terms of this Agreement, comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation(s).

(i) Make its internal practices, books, and records relating to Business Associate's use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Department of Health and Human Services (HHS), the Office for Civil Rights (OCR), or their agents for purposes of determining compliance with the HIPAA Rules.

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

(a) Business Associate may only use or disclose Protected Health Information as necessary to perform the agreed upon services.

(b) Business Associate may use or disclose Protected Health Information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for Protected Health Information in accordance with the minimum necessary requirements set forth in the Privacy Regulations.

(d) Business Associate may not use or disclose Protected Health Information in a manner that would violate the Privacy Regulations if done by Covered Entity except for the specific uses and disclosures set forth in (e) and (f).

(e) Business Associate may use and 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 the disclosures are required by law, or 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 in which the confidentiality of the information has been breached.

(f) Business Associate may provide data aggregation services relating to the Health Care Operations of the Covered Entity.

#### **4. Covered Entity Obligations**

(a) 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.

(b) 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.

(c) 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. In the event Business Associate reasonably believes that the restriction impairs Business Associate's ability to perform the agreed upon services, the Parties will mutually agree upon any necessary modification of Business Associate's obligation to perform said services.

(d) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

(e) Covered Entity will not disclose Protected Health Information to Business Associate except to the extent permitted under the HIPAA Rules and will limit disclosure to the minimum necessary for purposes of the services provided by Business Associate.

(f) Covered Entity will obtain any applicable consents or authorizations that may be required under the HIPAA Rules, or applicable state law, before furnishing Business Associate with any Protected Health Information.

#### **5. Term and Termination**

(a) Term. The Term of this Agreement shall be effective when signed by both Parties and shall terminate on completion of the services, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) 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 the Agreement and Business Associate has not cured the breach or ended the violation within a reasonable time specified by Covered Entity.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with the Security Rule with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
4. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in Sections 3(e) and (f).
5. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

## **6. Miscellaneous Provisions**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules 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 compliance with the requirements of the HIPAA Rules and any other applicable law.

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

(d) Violation of Local, State or Federal Law. No provision herein shall be construed to require Business Associate to engage in any conduct that would be a violation of local, state, or federal law, or any other applicable law, including, but not limited to, any lawful administrative or judicial order.

(e) Limitation of Liability. The Parties agree that any liability of Business Associate arising out of this Agreement shall not exceed the fees beyond postage paid by Covered Entity for services rendered by Business Associate within the twelve (12) month period prior to such incident giving rise to such liability. In no event shall Business Associate, or any of its owners, officers, directors, employees, affiliates, or subsidiaries, be liable to Covered Entity for any special, consequential, incidental, or indirect damages arising out of this Agreement.

(f) No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Covered Entity and Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

(g) Counterparts; Electronic Signatures. This Agreement may be executed in counterparts and signed electronically and delivered by email, facsimile, or similar transmission, and an email, facsimile, or similar transmission evidencing execution, including .pdf copies of executed counterparts, will be effective as a valid and binding agreement between the parties for all purposes.

**7. Contact Person**

(a) Covered Entity designates the following staff position/title as the contact person:

\_\_\_\_\_.

b) Business Associate designates **Bryan Pulliam** as the contact person: 820 W. 2<sup>nd</sup> Street N., Wichita, Kansas 67203-6005; (316) 247-5361; [bjpulliam@postalocity.com](mailto:bjpulliam@postalocity.com).

THIS BUSINESS ASSOCIATE AGREEMENT HAS BEEN EXECUTED BY THE PARTIES ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_: POSTAL PRESORT, INC.

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

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

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

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

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

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