



## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date") by and between \_\_\_\_\_ ("Customer") and **Availity, LLC**, a Delaware limited liability company (together with its wholly-owned subsidiary, **RealMed Corporation**, a Delaware corporation), collectively hereafter known as "Availity".

### RECITALS

**WHEREAS**, Customer and Availity are parties to an agreement, pursuant to which the fulfillment of the Parties' obligations thereunder necessitates the exchange of, or access to, data including individually identifiable health information,

**WHEREAS**, Availity and Customer are required to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, inappropriate use and disclosure of PHI and electronic PHI under HIPAA and the HITECH Act under the ARRA of 2009.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

### AGREEMENT

#### ARTICLE 1 DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

- 1.1 "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. §160.103, and in reference to the party to this Agreement, shall mean Availity.
- 1.2 "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. §160.103, and in reference to the parties to this Agreement, shall mean Customer.
- 1.3 "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- 1.4 "Electronic PHI" means PHI transmitted by or maintained in electronic media.
- 1.5 "HIPAA Rules" means the Privacy, Security, Breach Notification, Transactions, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 1.6 "HITECH Act" shall mean the Health Information Technology for Economic Clinical Health Act, Title VIII of Division A and Title VI of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L. 111-5).
- 1.7 "Parties" shall mean Availity and Customer. (Availity and Customer, individually, may be referred to as a "Party".)
- 1.8 "Customer Agreement" shall mean the Customer Agreement between Availity and Customer and other separate agreement(s) between the parties in which Availity performs functions or activities on behalf of Customer.
- 1.9 Other definitions: The following terms used in this Agreement shall have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Limited Data Set, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Standard, Subcontractor, Transaction, Unsecured Protected Health Information, and Use. Other terms shall have the definitions set for in this Agreement.

#### ARTICLE 2 CONFIDENTIALITY

2.1 Obligations and Activities of Availity. Availity agrees as follows:

- (a) not to use or further disclose PHI other than as permitted or required by this Agreement, in accordance with the Minimum Necessary rules, or as Required By Law;
- (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted by this Agreement, the Customer Agreement, and the HIPAA Rules, and to comply with Subpart C of 45 C.F.R. part 164 with respect to Electronic PHI;



- (c) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Customer;
- (d) to report to Customer within a reasonable time and in writing any suspected or actual breach of security, intrusion or unauthorized use, or disclosure of Unsecured PHI of which Availity becomes aware. Availity shall take (i) prompt corrective action to cure any such deficiencies; and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. For reports of incidents constituting a Breach, the report shall include, to the extent available, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during a Breach of Unsecured Protected Health Information;
- (e) to report to Customer in writing any of the following Security Incidents of which Availity becomes aware or upon Customer's request: (A) unauthorized access, use, disclosure, modification, or destruction of Customer's Electronic PHI, or (B) unauthorized interference with system operations in Availity's information systems that contain or provide access to Customer's Electronic PHI
- (f) to mitigate, to the extent practicable, any harmful effect that is known to Availity of a use or disclosure of PHI by Availity in violation of the requirements of this Agreement;
- (g) in accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Availity agree in writing to the same restrictions, conditions, and requirements that apply to Availity with respect to such information;
- (h) at the request of Customer and in the time and manner reasonably designated by Customer, furnish access to PHI in a Designated Record Set, to Customer or, as directed by Customer, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Availity will not be required to furnish access to PHI that is maintained in more than one Designated Record Set or at more than one location, as provided in 45 CFR §164.524(c)(1);
- (i) to make any amendment(s) to PHI in a Designated Record Set that Customer directs or agrees to pursuant to 45 CFR §164.526 at the request of Customer or an Individual, and in the time and manner reasonably requested by Customer;
- (j) subject to Availity's reasonable confidentiality and security practices, to make internal practices, books, and records relating to the use and disclosure of PHI available to Customer or, at the request of Customer, to the Secretary, in a time and manner reasonably requested by Customer or designated by the Secretary, for purposes of the Secretary determining Customer's compliance with the Privacy Rule;
- (k) to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (l) to provide to Customer or an Individual, in a time and manner reasonably requested by Customer, information collected in accordance with Section 2.1(k) above to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (m) if and only to the extent Availity is to carry out one or more of the Customer's obligation(s) under Subpart E of 45 C.F.R. part 164, Availity agrees to comply with the requirements of Subpart E that apply to the Customer in the performance of such obligation(s);

## 2.2 Specific Use and Disclosure Provisions.

- (a) Except as otherwise limited in this Agreement, Availity may use PHI only (i) in accordance with the Customer Agreement, (ii) for the proper management and administration of Availity; (iii) to carry out Availity's legal responsibilities; or (iv) as otherwise permitted by this Agreement
- (b) Except as otherwise limited in this Agreement, Availity may only disclose PHI for the purposes set forth in (a) above (i) as Required By Law, or (ii) provided that Availity has first obtained (A) reasonable assurances from the person to whom the information is disclosed that the PHI 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 (B) reasonable assurances from the person to whom the information is disclosed that such person will notify Availity of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Availity may create de-identified information that may be used and disclosed by Availity as Availity deems appropriate, provided that the information is de-identified in accordance with the HIPAA Rules.
- (d) Availity may use PHI to provide Data Aggregation services to Customer. Availity may also use PHI to create, use and disclose a Limited Data Set consistent with the HIPAA Rules.



### 2.3 Obligations of Customer

- (a) Customer shall notify Availity of any limitations in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Availity's use or disclosure of PHI.
- (b) Customer shall notify Availity of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Availity's use or disclosure of PHI.
- (c) Customer shall notify Availity of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Availity's use or disclosure of PHI.
- (d) Customer shall comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Customer agrees to ensure that any patient authorizations or consents that may be required under state or federal law or regulation have been obtained in order to transmit PHI to Availity and to enable Availity and its subcontractors to use and disclose PHI as contemplated by this Agreement and the Customer Agreement.

2.4 Permissible Requests by Covered Entity. Customer shall not request Availity to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Customer.

## **ARTICLE 3 EXCHANGE OF STANDARD TRANSMISSIONS**

3.1 Obligations of the Parties. Each of the Parties agrees that it will not enter into a trading partner agreement that affects the Transactions Rule's implementation specifications by:

- (a) changing the definition, data condition, or use of a data element or segment.
- (b) adding any data elements or segments to the maximum defined data set.
- (c) using any code or data elements that are either marked "not used" or are not contained in the implementation specifications.
- (d) changing the meaning or intent of any of the implementation specifications.

3.2 Additional Specifications. Availity shall, from time to time, inform Customer of acceptable formats in which to transmit data. Customer shall only transmit data in such formats and in accordance with the Availity Electronic Data Interchange Guidelines, as applicable.

3.3 Backup. Customer shall maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary.

3.4 Incorporation of Modifications to HHS Transaction Standards. Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the Transactions Rule. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

## **ARTICLE 4 MISCELLANEOUS**

4.1 Indemnification. Each Party agrees to indemnify the other for any damages, costs, expenses or liabilities, including reasonable legal fees and costs, incurred in connection with third-party claims arising from or related to a breach of such Party's obligations hereunder.

4.2 Term and Termination.

- (a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Customer to Availity, or created or received by Availity on behalf of Customer is destroyed or returned to Customer, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section
- (b) Termination for Cause. Upon a material breach by either Party of its obligation hereunder, the other Party may terminate this Agreement and the Customer Agreement in accordance with the terms of the Customer Agreement applicable to terminations for cause.
- (c) Effect of Termination.



- (i) Except as provided in paragraph 4.2(c)(ii), upon termination of this Agreement, for any reason, Availity shall return or destroy all PHI received from Customer or created or received by Availity on behalf of Customer. This provision shall apply to PHI that is in the possession of subcontractors or agents of Availity. Availity shall retain no copies of the PHI.
  - (ii) In the event that Availity determines that returning or destroying the PHI is infeasible, with respect to PHI received from Customer, or created, maintained, or received by Availity on behalf of Customer, Availity shall:
    - a. Retain only that PHI which is necessary for Availity to continue its proper management and administration or to carry out its legal responsibilities;
    - b. Return to Customer or destroy the remaining PHI that Availity still maintains in any form;
    - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Availity retains the PHI;
    - d. Not use or disclose the PHI retained by Availity other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Agreement which applied prior to termination; and
    - e. Return to Customer or destroy the PHI retained by Availity when it is no longer needed by Availity for its proper management and administration or to carry out its legal responsibilities.
- 4.3 Regulatory References. A reference in this Agreement to a section of the HIPAA Rules means the section as in effect or as amended.
- 4.4 Survival. The respective rights and obligations of the Parties under Sections 4.1 and 4.2(c) of this Agreement shall survive the termination of this Agreement.
- 4.5 Limitation of Damages. Other than liabilities under Section 4.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any breach of this agreement, or any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.
- 4.6 No Third Party Beneficiaries. Nothing in this Agreement will create any right in any third party as against Availity or Customer or be construed for the benefit of any third party.
- 4.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the HIPAA Rules. This Agreement supersedes any and all prior representations, understandings, or agreements, written or oral, concerning the subject matter herein, including conflicting provisions in the Customer Agreement.
- 4.8 Amendment. The Parties agree that this Agreement will be amended automatically to conform to any changes in the HIPAA Rules as are necessary for each of them to comply with the current requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law, the Parties shall negotiate in good faith to amend the terms of this Agreement within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Customer Agreement upon ten (10) days written notice to the other Party. Except as provided above, this Agreement may be amended or modified only in a writing signed by the Parties.
- 4.9 Other Terms. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160, 162 and 164. Any reference to a regulation or section in the Code of Federal Regulations ("CFR") shall include any corresponding or amended regulation issued subsequently regardless of the date of issue.



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first stated above.

**AVAILITY, L.L.C.**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Availity, L.L.C.  
\_\_\_\_\_  
Organization Name

P.O. Box 550857  
\_\_\_\_\_  
Address

Jacksonville, FL 32255-0857  
\_\_\_\_\_  
Address

904-470-4900 or 800-282-4548  
\_\_\_\_\_  
Phone

**CUSTOMER**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Address

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