



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) by and between _____ (hereinafter known as “Covered Entity”) and Office Ally, LLC. (hereinafter known as “Business Associate”), and is effective as of _____, _____. Covered Entity and Business Associate shall collectively be known herein as “the Parties”.

WHEREAS, Covered Entity wishes to commence a business relationship with Business Associate whereby Business Associate will provide products and services to Covered Entity pursuant to a separate services agreement;

WHEREAS, the nature of the prospective contractual relationship between Covered Entity and Business Associates may involve the exchange of Protected Health Information (“PHI”) or Electronic Protected Health Information (“ePHI”) as those terms are defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including all pertinent regulations issued by the Department of Health and Human Services (“HHS”);

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide the security of PHI and/or ePHI disclosed to Business Associate in compliance with the Privacy and Security Rule.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows.

I. DEFINITIONS

- a. “*Breach*” means the unauthorized acquisition, access, use or disclosure of PHI without regard to whether such access, use or disclosure compromises the security or privacy of the PHI such that the Breach poses a significant risk of financial, reputational, or other harm to the individual, as provided in the 45 CFR § 164.402.
- b. “*Business Associate*” shall have the same meaning as given in 45 CFR § 160.103. For the purpose of this Agreement Office Ally, LLC is the Business Associate.
- c. “*Covered Entity*” shall have the same meaning as given in 45 CFR § 160.103.
- d. “*Discovery*” shall mean the first day on which a Breach is known to Business Associate (including any person, other than the individual committing the breach, that is an employee officer, or other agent of Business Associate), or should reasonably have been known to Business Associate (or person), to have occurred.
- e. “*HIPAA*” or “*Health Insurance Portability and Accountability Act of 1996*” is the law under which the Privacy and Security Rules were promulgated.
- f. “*HITECH Act*” or “*Health Information Technology for Economic and Clinical Health Act*” are those provisions set forth in Title XIII of Public Law 111-5 as enacted on February 17, 2009.
- g. “*Individual*” shall have the same meaning as the term “individual” in 45 CFR § 164.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).
- h. “*Privacy Rule*” is the regulation entitled “Standards for Privacy of Individually Identifiable Health Information,” promulgated under HIPAA and/or the HITECH Act that is codified at 45 CFR part 160 and 164, Subparts A, D, and E.
- i. “*Protected Health Information*” (“*PHI*”) and “*Electronic Protected health Information*” (“*ePHI*”) shall have the meaning given to such terms as 45 CFR § 160.103
- j. “*Required By Law*” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
- k. “*Security Rule*” is the regulation entitled “Security Standards for the Protection of Electronic Protected Health Information,” promulgated under HIPAA and/or the HITECH Act that is codified at 45 CFR, parts 160 and 164, subparts A,C, and D.
- l. “*Secretary*” shall have the same meaning as given in 45 CFR § 160.103.

- m. “Protected Health Information” or “PHI” shall have the same meaning as given in 45 CFR § 160.103., limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- n. “Unsecured Protected Health Information” means Protected Health Information that is not secured through the use of a technology or methodology specified by guidance issued by the Secretary from time to time.

II. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. *Limitation(s) on Uses and Disclosures.* Business Associate agrees to not use or disclose PHI or ePHI other than as permitted or required by this Agreement or as Required by Law. Business Associate’s use and disclosure of PHI or ePHI is strictly limited to those instances where it is necessary to the performance of duties contractually delegated to it by Covered Entity in a separate services agreement or as Required By Law. Business Associate shall also comply with any further limitations on uses and disclosures agreed to by Covered Entity in accordance with 45 CFR § 164.522, provided that such agreed upon limitations have been communicated to Business Associate, may use or disclose Protected Covered Entity as specified in any written agreement between the parties, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum policies and procedures of the Covered Entity.
- b. *Permitted Uses and Disclosures.* Business Associate may use and disclose PHI and/or ePHI created or received pursuant to this agreement as follows:
 - i. *To carry out the purposes of this Agreement.* Business Associate may use and disclose Covered Entity’s PHI and/or ePHI received or created by Business Associate (or its agents and subcontractors) in performing its obligations pursuant to this Agreement.
 - ii. *For Archival purposes.*
 - iii. *Use for Management and Administration.* Business Associate may use PHI and/or ePHI created or received in its capacity as a Business Associate of Covered Entity for the proper management and administration of Business Associate, if such use is necessary (i) for the proper management and administration of Business Associate or (ii) to carry out the legal responsibilities of Business Associate.
 - iv. *Disclosure for Management and Administration.* Business Associate may disclose PHI and/or ePHI created or received in its capacity as a Business Associate of Covered Entity for the proper management and administration of Business Associate if (i) the disclosure is Required by Law or (ii) Business Associate (a) obtains reasonable assurances from the person to whom the PHI and/or ePHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person agrees to notify Business Associate of any instances of which it becomes aware in which the confidentiality and security of the PHI and/or ePHI has been breached.
 - v. *Data Aggregation Services.* Business Associate may aggregate the PHI and/or ePHI created or received pursuant this Agreement with the PHI and/or ePHI of other covered entities that Business Associate has in its possession through its capacity as a Business Associate of such covered entities for the purpose of providing Covered Entity with data analyses relating to the health care operations of Covered Entity (as defined in 45 C.F.R. §164.501).
 - vi. *De-Identification of PHI and/or ePHI.* Business Associate may de-identify any and all PHI and/or ePHI received or created pursuant to this Agreement, provided that the de-identification process conforms to the requirements of 45 CFR § 164.514(b).
- c. *Nondisclosure.* Business Associate shall not use or further disclose Covered Entity’s PHI and/or ePHI otherwise than permitted or required by this Agreement or as Required by Law.
- d. *Safeguards.* Business Associate shall use appropriate administrative, physical, and technical safeguards, including, among others, policies and procedures regarding the protection of PHI and/or ePHI and the provisions of training on such policies and procedures to applicable employees, independent contractors and volunteers, that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and/or ePHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity.
 - i. With respect to ePHI, Business Associate shall implement and comply with (and ensure that its subcontractors implement and comply with) the administrative safeguards set forth at 45 CFR § 164.308, the physical safeguards set forth at 45 CFR § 164.310, the technical safeguards set forth at 45 CFR § 164.312, and the policies and procedures set forth at 45 CFR § 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate acknowledges that, effective the later of Effective Date of this Agreement or February 17, 2010, (a) the foregoing safeguards, policies and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (b) Business Associate may be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguards, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.

- ii. With respect to ePHI, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides ePHI, agrees to implement reasonable and appropriate safeguards to protect it.
- e. *Reporting of Breaches.* Except as specifically provided in subsection (d)(ii), Business Associate agrees to report to Covered Entity any Breach of Unsecured PHI without unreasonable delay and in no such case later than ten (10) calendar days after Discovery of a Breach. Such notice shall include the identification of each individual whose Unsecured PHI has been or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed in connection with such Breach. In addition, Business Associate shall provide any additional information reasonable requested by Covered Entity for purposes of investigating and responding to the Breach. Notification of Breach or potential Breach under this Agreement shall be made to Covered Entity as indicated in section X part d.
- i. *Determination of Significant Risk.* Business Associate specifically agrees that it shall be the Covered Entity's right and responsibility to determine whether a Breach compromises the security or privacy of the PHI such that the Breach poses a significant risk of financial, reputational, or other harm to the individual.
 - ii. *Exceptions to Reporting Obligation.* Business Associate shall not be required to report an individual Breach to covered Entity that is described in this subparagraph ii as follows:
 - a. The unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority granted by such Business Associate and does not result in further acquisition, access, use or disclosure in a manner not permitted under the Privacy Rule.
 - b. Any inadvertent disclosure by a person who is authorized to access PHI at Business Associate to another person authorized to access PHI at Business Associate, and the information received as a result of such disclosure is not further acquired, accessed, used or disclosed in a manner not permitted under the Privacy Rule.
 - c. Any disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Business Associate shall retain the documentation required by this subparagraph ii and shall make it available to Covered Entity upon request as appropriate in a format as mutually agreed between the parties. Business Associate shall provide Covered Entity with any further information or documentation that Covered Entity requests related to such Breach.

- f. *Additional Responsibilities in the Event of Breach.* Business Associate shall take prompt steps to limit or avoid the recurrence of any Security Breach, and take any other action pertaining to such unauthorized access or disclosure required by applicable federal and state laws and regulations. Business Associate must comply with this provision regardless of any actions taken by Covered Entity. Business Associate further agrees to mitigate, to the extent practicable, any harmful effect that becomes known to Business Associate as a result of a Breach or use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- g. *Use of Agents and Subcontractors.* Business Associate shall ensure that any of its agents and subcontractors to whom it provides PHI and/or ePHI created or received pursuant to this Agreement agrees to the same restrictions, conditions and safeguards that apply to Business Associate pursuant to this Agreement with respect to such PHI and/or ePHI. With respect to the obligations of Sections II.e and II.f. hereof, Business Associate represents that any agent or subcontractor shall be obligated to notify Business Associate of any Breach within 10 calendar days in the same manner and according to the same terms and provided herein. In no event shall Subcontractor, without Covered Entity's prior written approval, provide PHI received from, or created or received by Business Associate on behalf of Covered Entity, to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes or otherwise has access to PHI outside of the United States.
- h. *Availability of Information to Covered Entity.* Within five (5) business days of receipt of a request from Covered Entity, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligation to provide access to, and a copy of, PHI and/or ePHI pursuant to this Agreement in accordance with the Privacy Rule, including but not limited to 45 C.F.R § 164.524. If an Individual requests such information directly from Business Associate, Business Associate must notify Covered Entity in writing within five (5) business days. Business Associate shall not give the Individual access to the information unless access is approved by Covered Entity. Covered Entity shall have full discretion to determine whether the Individual shall be given access.
- i. *Amendment of PHI.* Within five (5) business days of receipt of a request from Covered Entity, Business Associate shall make Covered Entity's PHI and/or ePHI available to Covered Entity so that Covered Entity may fulfill its obligations to amend such PHI and/or ePHI pursuant to the Privacy Rule, including but not limited to, 45 C.F.R. § 164.526 Business Associate shall incorporate any amendments to any Covered Entity's PHI and/or ePHI maintained by Business Associate.
- j. *Accounting of PHI.* Within five (5) business days notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate shall make available the PHI, including ePHI, to Covered Entity as required for Covered Entity to fulfill its obligations to provide an accounting pursuant to the Privacy Rule, including but not limited to, 45 C.F.R § 164.528. Business Associate shall implement a process that allows for such an accounting.

- k. *Availability of Books and Records.* Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, including ePHI, created or received pursuant to this Agreement available to the Secretary of the United States Department of Health and Human Services, for the purpose of determining Covered Entity's compliance with the Privacy and Security Rules as set forth in 45 C.F.R. § 160.310.
- l. *Record Retention.* Subject to section 5 below, Business Associate shall retain all PHI and or/ePHI received from Covered Entity, or created or received in the course of performing its obligations, for the duration of the term of this Agreement.
- m. *Minimum Necessary Amount of PHI.* Business Associate acknowledges that it shall request from Covered Entity and so disclose to its affiliates, agents' and subcontractors or other authorized third parties, only (i) the information contained in a "limited data set," as such term is defined at 45 C.F.R. 164.514(e) (2), or, (ii) if needed by Business Associate or its affiliates, agents, subcontractors or other authorized third parties, to the minimum necessary data to accomplish the intended purpose of such requests or disclosures. In all cases, Business Associate shall request and disclose PHI only in a manner that is consistent with guidance issued by the Secretary from time to time.
- n. *Standard Transactions.* If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.
- o. *Data Ownership.* Business Associate acknowledges that Covered Entity is the owner of all PHI and/or ePHI.
- p. *Mutual Indemnification.* Each party (the "Indemnifying Party") shall indemnify and hold harmless the other party (the Indemnifying Party") including any of the Indemnified Party's affiliates, directors, officers, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorney's fees) arising out of or relating to any Breach or other non-permitted use or disclosure of PHI or ePHI, failure to safeguard PHI or ePHI, or other breach of this Agreement by the Indemnifying Party of any of the Indemnifying Party's affiliates, directors, officers, employees, agents or subcontractors.

Furthermore, any specific listing of duties or functions to be performed by Business Associate for Covered Entity contained in a separate contract (or addendum thereto) between the Parties is hereby incorporated by reference into this agreement for the sole purpose of further elaborating duties and functions that Business Associate is contractually undertaking on behalf of the Covered Entity.

In all instances, Business Associate shall not use or disclose PHI and/or ePHI obtained from Covered Entity in a manner that would violate the Security and Privacy Rule of HIPAA, the HITECH Act or the pertinent regulations of HHS.

III. OBLIGATIONS OF COVERED ENTITY

- a. *Notice of Privacy Practices.* Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices that are produced in accordance with 45 C.F.R 164.520 (as well as any changes to that notice), to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.
- b. *Revocation of Authorization.* Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's use or disclosure of PHI.
- c. *Restrictions.* Covered Entity shall notify Business Associate of any restriction to the use or discloser of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

IV. AUDITS, INSPECTION AND ENFORCEMENT

Covered Entity, after providing ten (10) business days' written notice, may inspect the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether the Business Associate has complied with this Agreement

V. TERM AND TERMINATION

- a. Term. The Term of this Agreement shall be effective as of the compliance date set out in applicable Regulations, and subject to any extension obtained by either party or granted under the Regulations; and shall terminate when 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, protections are extended to such information in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

- ii. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

- i. Except as provided in paragraph (c)(ii) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of the Covered Entity at the end of 7 years. 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.
- ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintain such PHI.
- iii. Right of Termination of Existing Service Contracts. Should Business Associate make a disclosure of PHI in violation of this Agreement, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties.

VI. DISCLAIMER

Business Associate makes no warranty or representation that compliance by Covered Entity with this Agreement, HIPAA, the HITECH Act, or the Privacy and Security Rules will be adequate or satisfactory for Covered Entity's own purposes. Covered Entity is solely responsible for all decisions made by Covered Entity regarding the safeguards of PHI and/or ePHI.

VII. 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 Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

VIII. CHANGE IN APPLICABLE LAWS OR REGULATIONS

In the event the laws or regulations of the United States or the State in which the majority of services are rendered are modified or amended in any material way with respect to this Agreement, this Agreement shall not be terminated but rather, to the extent feasible, shall be promptly amended by the parties to operating in compliance with the existing law. The parties acknowledge that their responsibilities under this Agreement may be affected and governed by the requirements of HIPAA and/or the HITECH Act, to the extent that regulations implementing HIPAA and/or the HITECH Act (the "Regulations") become effective during the Term of this Agreement or any renewal thereof. Both parties agree that, upon the effective date of any such obligations applicable to each of them under such Regulations pursuant to their responsibilities hereunder. To the extent any amendments to this Agreement shall be necessary to effectuate or clarify the obligations of the parties pursuant to such Regulations, the parties hereby agree to negotiate such amendments in good faith, subject to the right of either party to terminate this Agreement in accordance with its terms.

IX. REMEDIES IN THE EVENT OF A BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in Section II of this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Section II above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Section II. Furthermore, in the event of breach of Section II by Business Associate, Covered Entity will be entitled to reimbursement and indemnification from Business Associate for the Covered Entity's reasonable attorneys fees and expenses and costs that were reasonable incurred as a proximate result of the Business Associate's breach. The remedies in this Paragraph G shall be in addition to (and not to supersede) any action for damages Covered Entity may have for breach of any part of this Agreement.

X. MODIFICATION

This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. 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 and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

XI. INTERPRETATION

Should there be any conflict between the language of this contract and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless in a subsequent

written agreement the Parties specifically refer to this Agreement by its title and date, and, also, specifically state that the provisions of the later written agreement shall control over this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the Privacy and Security Rules and/or the HITECH Act.

XII. MISCELLANEOUS

- a. Nothing in this Agreement shall be construed as an admission on the part of either Party that the relationship between the Covered Entity and the Business Associate is one of "Covered Entity" and "Business Associate" as those terms are known and construed under HIPAA, the HITECH Act, and pertinent regulations issued by the Secretary. However, the duties and obligations of Business Associate under this agreement remain in full force and effect regardless of whether or not the relationship between the Parties is determined to be one between a "Covered Entity" and a "Business Associate" as those terms are known and construed under HIPAA, the HITECH Act, and pertinent regulations issued by the Secretary.
- b. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, the HITECH Act and the Security and Privacy Rule.
- c. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- d. Notice to Covered Entity or Business Associate. Any notice required under this Agreement to be given to Covered Entity or Business Associate shall be made in writing to:

COVERED ENTITY:

Practice Information

Name

Street Address

City/State/Zip Code

Phone Number

BUSINESS ASSOCIATE:

Brian O'Neill
Name

President & CEO
Title

PO Box 872020
Street Address

Vancouver, WA 98687
City/State/Zip Code

360-975-7000
Phone Number

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

Covered Entity

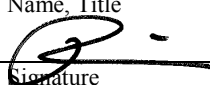
Name, Title

Signature

Date:

Business Associate

Brian P. O'Neill
Name, Title


Signature

Date:

PLEASE KEEP A COPY FOR YOUR RECORDS.

**PLEASE FAX A COPY TO:
(360) 314-2184**