Business Associate Agreement

Unless otherwise agreed in a separate written and executed agreement between Outcomes and Client, by using Outcomes' software, solutions, applications, services and other products ("Services"), you ("Client" or "Covered Entity") and Outcomes Operating, Inc. including its subsidiaries and affiliates ("Outcomes" or "Business Associate") acknowledge and agree to the terms set forth in this Business Associate Agreement (the "Agreement"), which is incorporated by reference into the Underlying Service Agreement(s). Outcomes and Client may sometimes be referred to herein as a "Party" or collectively as the "Parties."

WHEREAS, Outcomes is in the business of producing, selling, installing, and supporting pharmacy software, and in the normal course of installation and support of said software will, from time to time, have access to protected health information;

WHEREAS, Client is in the business of providing pharmacy services, Client desires to purchase software and/or services from Outcomes, and Client acknowledges Outcomes' need for occasional access to protected health information in the furtherance of its services to Client;

WHEREAS, Outcomes is a Business Associate (as defined below) for the purposes of Client;

WHEREAS, Outcomes and Client maintain a separate Underlying Services Agreement (as defined herein);

WHEREAS, Outcomes and Client wish to enter into this Agreement to confirm their compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164; the HIPAA Security Rule, 45 C.F.R. Parts 160, 162 and 164; the Act; the Breach Notification Rule (8/24/09), 45 C.F.R. Parts 160 and 164; Subtitle D of the American Recovery and Reinvestment Act of 2009 ("ARRA '09") entitled "Health Information Technology for Economic and Clinical Health", generally referred to as the HITECH Act ("HITECH"), Section 13400 *et seq.*; state laws and regulations not preempted by HIPAA that are addressed to the privacy and security of Protected Health Information ("PHI"); and

WHEREAS, the purpose of this Agreement is to reflect the intention of the Parties that their relationship shall be in compliance with the applicable statutes, rules and regulations referenced herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R §160.103, 45 CFR § 164.304, and 45 C.F.R. § 164.501.

1.1 Business Associate. "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R §160.103, and for the purposes of this Agreement shall mean Outcomes.

1.2 Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R § 160.103, and for the purposes of this Agreement shall mean Client.

1.3 Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "Electronic Protected Health Information" in 45 C.F.R. § 160.103, and shall refer to PHI that Client, or Business Associate on behalf of Client, transmits or maintains in electronic media.

1.4 Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502.

1.5 Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

1.6 Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 Underlying Services Agreement. "Underlying Services Agreement" shall mean the agreement between the Parties hereto setting forth the scope of the services Client has engaged Business Associate to provide on Client's behalf.

1.8 Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance, as set forth as 45 C.F.R. § 164.402.

1.9 Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.501.

1.10 Secretary. "Secretary" shall refer to the U.S. Secretary of Health and Human Services.

2. Obligations and Activities of Business Associate

2.1 Obligations Regarding Uses and Disclosures of PHI.

(a) Outcomes agrees to not use or further disclose Protected Health Information other than as permitted or required by the Underlying Services Agreement or as Required by Law.

(b) Outcomes agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Outcomes agrees to mitigate, to the extent practicable, any harmful effect that is known to Outcomes of a use or disclosure of Protected Health Information by Outcomes in violation of the requirements of this Agreement.

(d) Outcomes agrees to report to Client any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Outcomes agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from Client, or created by Outcomes on behalf of Client, agrees to the same restrictions and conditions that apply through this Agreement to Outcomes with respect to such information.

(f) Outcomes agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Outcomes on behalf of Client, available to Client, or at the request of the Client to the Secretary, in a time and manner designated by the Client or the Secretary, for purposes of the Secretary determining Client's compliance with the Privacy Rule.

(g) Outcomes agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(h) Outcomes agrees to provide to Client or an Individual, in the reasonable time and manner designated by Client, information collected in accordance with Section 2.7 of this Agreement, to permit Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(i) Outcomes agrees, at the Client's request, to provide to Client or an Individual in the reasonable time and manner designated by Client, the Protected Health Information requested by an individual pursuant to 45 C.F.R. § 164.524.

(j) Outcomes agrees, at the Client's request, and in the reasonable time and manner designated by Client, to provide to Client the Protected Health Information that an individual seeks to amend pursuant to 45 C.F.R. §164.526.

2.2 Obligations Regarding Electronic PHI

(a) Outcomes agrees to comply with the HIPAA Security Regulations, 45 C.F.R. Parts 160, 162 and 164, with respect to any electronic PHI Outcomes creates, receives, maintains or transmits for or on behalf of Client.

(b) In particular, with respect to such electronic PHI:

(i) Outcomes agrees to implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI as required by the Security Regulations.

(ii)   Outcomes will ensure that any agent, including a subcontractor to whom it provides electronic PHI, agrees to implement reasonable and appropriate safeguards to protect the electronic PHI.

(iii)   Outcomes shall report to Client any successful security incident of which Business Associate becomes aware with respect to the electronic PHI. Notwithstanding the foregoing, 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 (as defined herein) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, phishing attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

2.3   <u>Obligations Regarding Notification of Breaches of Unsecured PHI.</u>

(a)   Outcomes will notify Client of Breaches of Unsecured PHI without unreasonable delay and in no case later than sixty (60) calendar days after the discovery of such a Breach in Unsecured PHI, as these terms are defined at 45 C.F.R. 164 subpart D. Outcomes notice to the Client shall include the applicable elements as set forth at 45 C.F.R. §164.410.

(b)   Comply with all requirements of the HIPAA Breach Notification Rule pursuant to 45 C.F.R. 164 subpart D.

3. Permitted Uses and Disclosures by Business Associate

3.1.   Except as otherwise limited in this Agreement, Outcomes may use or disclose Protected Health Information on behalf of, or to provide services to, Client provided that such use or disclosure of Protected Health Information is: (A) in furtherance of the purposes set forth in the Underlying Services Agreement, including, but not limited to, the Installation and/ or Support of Outcomes' software, and associated licensed software; and (B) if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Client.

3.2.   Except as otherwise limited in this Agreement, Outcomes may disclose Protected Health Information for the proper management and administration of Outcomes, provided that any such disclosures are either: (A) required by law; or (B) made after Outcomes obtains reasonable assurances from the person to whom the information is disclosed that it 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 the person notifies Outcomes of any instances of which it is aware in which the confidentiality of the information has been breached.

3.3.   Outcomes may provide data aggregation services relating to the health care operations of the Client pursuant to 45 CFR § 164.504(e)(2)(i)(B).

3.4.   Business Associate may use PHI to create de-identified information ("De-Identified Information") in accordance with the applicable provisions of 45 C.F.R. § 164.514, and may use and disclose such De-Identified Information: (1) for the purposes described in the Underlying Services Agreement between Covered Entity and Business Associate; and (2) to fulfill any legal responsibilities of Covered Entity and/or Business Associate. Business Associate may also use and disclose such De-Identified Information for any purpose and in any manner consistent with applicable law; provided, however, that: (1) Business Associate will not re-identify De-Identified Information and (2) Business Associate will take reasonable steps to ensure that its workforce and any Subcontractors or third parties that receive De-Identified Information do not re-identify De-Identified Information.

4. Covered Entity Obligations

4.1   Client shall not request Outcomes to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Client.

4.2   Client shall notify Business Associate of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 C.F.R. § 164.522, or as mandated pursuant to Section 13405(c) of HITECH, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Term and Termination

5.1.   <u>Term.</u> The Term of this Agreement shall commence as of the Effective Date and shall terminate when all of the Protected Health Information provided by Client to Outcomes, or created or received by Outcomes on behalf of Client, is destroyed

or returned to Client, or, if Business Associate determines 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.

5.2. Termination for Cause. Upon either Party's knowledge of a material breach by the other Party, the non-breaching Party shall provide an opportunity for the breaching Party to cure the breach or end the violation. If the breaching Party does not cure the breach or end the violation within the reasonable time specified by the non-breaching Party, or if the breaching Party has breached a material term of this Agreement and cure is not possible, the non-breaching Party may immediately terminate this Agreement. If neither termination nor cure is feasible, the non-breaching Party may report the violation to the Secretary.

5.3. Effect of Termination.

(a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Outcomes shall return or destroy all Protected Health Information received from Client, or created or received by Outcomes on behalf of Client. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of Outcomes. Outcomes shall retain no copies of the Protected Health Information.

(b) In the event that Outcomes determines that returning or destroying the Protected Health Information is infeasible, Outcomes shall provide to Client, notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Outcomes 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 purposes that make the return or destruction infeasible, for so long as Outcomes maintains such Protected Health Information.

6. Other Terms

6.1. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Client to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

6.2. Survival. The respective rights and obligations of Outcomes under Section 5.3 of this Agreement shall survive the termination of this Agreement.

6.3. Interpretation. The provisions of this Agreement are to be interpreted at all times so as to be consistent with the statutes, rules and regulations referred to in this Agreement. In the event of any conflict among the provisions of this Agreement and the statutes, rules and regulations referred to herein, the provisions of such statutes, rules and regulations as currently written or as hereafter amended or otherwise modified by the Secretary shall prevail. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.

6.4. Entire Agreement. This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in anyway modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

6.5. Conflicts. In the event of a conflict between the terms of this Agreement and other terms of the Underlying Services Agreement, the terms of this Agreement shall govern and control.

END OF AGREEMENT