**BUSINESS ASSOCIATE AGREEMENT**

Covered Entity: GuardianTrac, LLC DBA GT Independence

Business Associate:

**BACKGROUND**

The Use or Disclosure of Protected Health Information by covered entities and business associates is regulated by applicable provisions of the Standards for Privacy of Individually Identifiable Health Information, the Security Standards for the Protection of Electronic Protected Health Information, the Breach Notification Rule, and the Enforcement Rule, located at 45 CFR Parts 160 and 164, subparts A, C, D and E, promulgated by the United States Department of Health and Human Services, pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by Title XIII, Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law No. 111-5.

Covered Entity and Business Associate are parties to one or more agreements or arrangements (collectively, the "Main Agreement") under which Business Associate performs certain services, functions or activities, including specifically:

Employment Guide services as outlined in the Employment Guide Contractor Agreement,

on behalf of Covered Entity ("Services"). Such Services involve the Use or Disclosure of Protected Health Information of Individuals created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.

The purpose of this Agreement is to set forth Business Associate's and Covered Entity's obligations and agreement regarding the Use and Disclosure of such Protected Health Information. To the extent Covered Entity and Business Associate previously entered into a Business Associate Agreement, or any amendments to such, this Agreement specifically supersedes all such prior agreements.

**TERMS**

**Covered Entity and Business Associate (the "Parties") agree as follows:**

1. Definitions. In addition to the terms already defined in this Agreement, the capitalized terms used in this Agreement shall have the definitions set forth in the HIPAA Rules, as may be amended (and any such amendment shall control), unless the context requires otherwise. These terms include the following:

1.1 "Breach:" The acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule, which compromises the security or privacy of such information, subject to certain exceptions described in Section 13402 of the HITECH Act and 45 CFR 164.402.

1.2 "Breach Notification Rule:" The breach of unsecured PHI requirements described in Section 13402 of the HITECH Act and 45 CFR Part 160 and Subpart D of Part 164.

1.3 "Designated Record Set:" A group of records maintained by or for a covered entity that is: (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about individuals (45 CFR 164.501).

1.4 "Disclosure:" The release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information (45

CFR 160.103).

1.5 "Electronic Health Record:" An electronic record of health-related information on an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff (Section 13400(5) of the HITECH Act).

1.6 "Electronic PHI:" PHI that is transmitted by or maintained in electronic media

(45CFR 160.103).

1.7 "Enforcement Rule:" The HIPAA enforcement rule, which pertain to compliance and investigations, the imposition of civil money penalties for violations of the HIPAA Administrative Simplification Rules, and procedures for hearings (45 CFR Part 160, Subparts C, D, and E).

1.8 "HIPAA:" The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

1.9 "HIPAA Rules:" As used in this Agreement, collectively the Privacy Rule, Security Rule, Breach Notification Rule and Enforcement Rule.

1.10 "HITECH Act:" The Health Information Technology for Economic and Clinical Health Act, which is Title XIII of Division A, and Title IV of Division B, of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5.

1.11 "Individual:" The person who is the subject of Protected Health Information

(45 CFR 160.103).

1.12 "Individually Identifiable Health Information:" Information that is a subset of health information, including demographic information collected from an Individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present,

or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the

provision of health care to an Individual; and (i) that identifies the Individual; or

(ii) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual (45 CFR 160.103).

1.13 "Privacy Rule:" The Standards for Privacy of Individually Identifiable Health

Information, 45 CFR Part 160 and Subparts A and E of Part 164.

1.14 "Protected Health Information or PHI:" Individually Identifiable Health information that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information: (i) in education

records covered by the Family Educational Rights and Privacy Act, as amended,

20 U.S.C. 1232g; (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) in employment records held by a covered entity in its role as employer; and

(iv)**regarding a person who has been deceased for** more than 50 years (45

CFR 160.103).

1.15 "Required by Law:" A mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law (45 CFR 164.103).

1.16 "Secretary:" The Secretary of the United States Department of Health and

Human Services or designee (45 CFR 160.103).

1.17 "Security Incident:" The attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an information system (45 CFR 164.304).

1.18 "Security Rule:" The Security Standards for the Protection of Electronic

Protected Health Information, 45 CFR Part 160 and Subparts A and C of Part

164.

1.19 "Subcontractor:" A person to whom Business Associate delegates a function, activity, or service, other than in the capacity of a member of the Workforce of Business Associate; a Subcontractor that creates, receives, maintains or transmits PHI on behalf of a business associate is deemed to be a "business associate" (45 CFR 160.103).

1.20 "Unsecured PHI:" PHI not secured through the use of a technology or methodology specified in guidance by the Secretary that renders PHI unusable, unreadable or indecipherable to unauthorized persons (45 CFR 164.402).

1.21 "Use:" The sharing, employment, application, utilization, examination, or analysis of Individually Identifiable Health Information within an entity that maintains such information (45 CFR 160.103).

1.22 "Workforce:" Employees, volunteers, trainees and other persons whose conduct in the performance of work for a covered entity or business associate, is under the direct control of such covered entity or business associate, whether paid or not (45 CFR 160.103).

2. Obligations and Activities of Business Associate. Business Associate agrees to maintain the confidentiality of any PHI created, received, maintained or transmitted by Business Associate on behalf of Covered Entity in accordance with all applicable federal, state and local laws and regulations, and more specifically, in accordance with the following:

2.1 Uses and Disclosures of PHI. Business Associate shall not Use or Disclose PHI created, received, maintained or transmitted by Business Associate on behalf of Covered Entity other than as permitted or required by this Agreement or as Required by Law.

2.2 Minimum Necessary. Business Associate shall make reasonable efforts to

limit Uses and Disclosures of, and requests for, PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure or request.

2.3 Mitigation of Harmful Effects. Business Associate shall mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, including compliance with any state law or contractual data breach requirements.

2.4 Safeguards to Protect PHI. Business Associate shall use appropriate safeguards

(and comply, where applicable, with the relevant Security Rule safeguards with respect to any Electronic PHI) to prevent the Use or Disclosure of PHI other than

as provided for by this Agreement.

2.5 Reporting of Improper Use or Disclosure of PHI, Breaches of Unsecured PHI and/or Security Incidents. Business Associate shall report to Covered Entity any Use or Disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including any Breaches of Unsecured PHI or Security Incidents. Such reports shall be made within five (5) calendar days of Business Associate becoming aware of such improper Use or Disclosure, Breach of Unsecured PHI or Security Incident. The Parties shall cooperate fully and in good

faith with each other in connection with resolving any improper Uses or Disclosures, Breaches of Unsecured PHI and Security Incidents, including, but not limited to, investigating the improper Use or Disclosure, Breach or Security Incident, preparing any required notifications to Individuals and others, mitigating the harm, and taking corrective action, as applicable.

2.6 Subcontractors. Business Associate shall ensure that any Subcontractor that

creates, receives, maintains or transmits PHI or, if applicable, Electronic PHI on behalf of Business Associate agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, including, but not limited to, the safeguard requirements, breach reporting requirements and the termination requirements. Business Associate shall satisfy this requirement by entering into a written business associate agreement with a Subcontractor, which complies with the applicable requirements of the HIPAA Rules.

2.7 Requests to Access or Amend PHI in a Designated Record Set. To the extent Business Associate maintains any PHI in a Designated Record Set, upon request, Business Associate shall make available to Covered Entity PHI in such manner that is necessary for Covered Entity to respond to and process an Individual's request for access or amendment to the PHI and incorporate any amendments to PHI in a Designated Record Set as directed by Covered Entity. Nothing in this Agreement shall be interpreted to require either party to provide an Individual access to: (i) information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding; (ii) psychotherapy notes; or (iii) information that is protected from disclosure under the Clinical Laboratory Improvements Amendments of 1988.

2.8 Disclosure Accounting. Business Associate shall document Disclosures of PHI and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528, and, to the extent applicable, Section

13405(c) of the HITECH Act and its implementing regulations.

2.8-1 Disclosure Tracking. Except as provided in Section 2.8-2, Business Associate shall record for each Disclosure of PHI, if any: (i) the Disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the Disclosure, (iii) a brief description of the PHI Disclosed, and (iv) a brief statement of the purpose of the Disclosure (collectively, the "Disclosure Information").

2.8-2 Exceptions from Disclosure Tracking. Business Associate does not need to record any Disclosures of PHI: (i) for the purpose of Covered Entity's Treatment, Payment or Health Care Operations (except as otherwise provided in Section 2.83); (ii) to the Individual who is the subject of the PHI Disclosed or to that Individual's personal representative; (iii) for

facility directory purposes or to persons involved in that Individual's health care or Payment for health care; (iv) pursuant to an authorization; (v) for

notification for disaster relief purposes, (vi) for national security or intelligence purposes, (vii) to law enforcement officials or correctional

institutions regarding inmates; (viii) incident to a permitted use or disclosure; or (ix) as part of a limited data set disclosed under a data use

agreement.

2.8-3 Accounting of Disclosures Through Electronic Health Record. To the extent Business Associate maintains or hosts an Electronic Health Record on behalf of Covered Entity (it does not), Business Associate shall track and make available to Covered Entity any PHI Disclosures made through the Electronic Health Record for Treatment, Payment and Health Care Operations, in accordance with the applicable effective date of Section 13405(c) of the HITECH Act and its implementing regulations.

2.9 Availability of Books and Records. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a prompt manner for purposes of determining compliance with the HIPAA Rules.

2.10 Carry Out Covered Entity's Obligations. To the extent Business Associate is asked to carry out any of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

2.11 Requests for Restrictions on Certain PHI Disclosures to Health Plans. Upon Covered Entity's request, Business Associate shall comply with any request of an Individual to not Disclose PHI to a health plan, including any business associate of a health plan, if the Disclosure is for purposes of carrying out

Payment or Health Care Operations and is not otherwise Required by Law, and the PHI pertains solely to a health care item or service for which the provider has been paid out of pocket in full.

2.12 Prohibition on Sale of PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless a valid authorization is obtained or an exception described in 45 CFR

164.502(a)(5)(ii)(B)(2) applies.

2.13 Electronic PHI. To the extent Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity, Business Associate shall:

2.13-1 Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI, and comply with the policies, procedures and documentation requirements, in accordance with the applicable requirements of the Security Rule.

2.13-2 Ensure that any Subcontractor that creates, receives, maintains or transmits Electronic PHI on behalf of Business Associate agrees to protect the security of Electronic PHI by complying with the applicable safeguards, policies, procedures and documentation requirements of the Security Rule.

2.13-3 As more fully described in Section 2.5, report to Covered Entity any Security Incident of which Business Associate becomes aware, including any Breaches of Unsecured PHI.

3. Permitted Uses and Disclosures by Business Associate. Except as otherwise limited in this Agreement:

3.1 Use or Disclosure for Business Associate Services. Business Associate

may Use or Disclose PHI to perform services, functions or activities for, or on behalf of, Covered Entity as specified in this Agreement and the underlying

Main Agreement between the Parties.

3.2 Uses for Business Associate's Management and Administration.

Business Associate may Use PHI for the proper management and administration of Business Associate or to carry out Business Associate's

own legal responsibilities.

3.3 Disclosures for Business Associate's Management and Administration.

Business Associate may Disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's own legal responsibilities provided the Disclosure is Required By Law, or

Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it shall 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.4 Use or Disclosure for Data Aggregation Services. Upon Covered Entity's request, Business Associate may Use or Disclose PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

4. Permissible Requests by Covered Entity. Business Associate may not, and Covered Entity shall not request Business Associate to, Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that Business Associate may Use or Disclose PHI as otherwise permitted in this Agreement (e.g., data aggregation, or management and administration and legal responsibilities of Business Associate).

5. Obligations of Covered Entity.

5.1 Notice to Business Associate. Covered Entity shall notify Business Associate

of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

5.2 Changes in or Revocation of Permission to Use or Disclose PHI. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes affect Business Associate's Use or Disclosure of PHI.

5.3 Restrictions to the Use or Disclosure of PHI. Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of PHI which Covered Entity has agreed to, or must make, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

6. Term and Termination.

6.1 Term. This Agreement takes effect on the date this Agreement is signed (i.e., the last date of signature by one of the Parties). However, if Business Associate commences services for Covered Entity before this Agreement is signed, the Parties acknowledge they are subject to the obligations under the HIPAA Rules that were in effect at that time. The requirements under this Agreement are continuing and survive termination of this Agreement or the Main Agreement until 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. If it is not feasible to return or destroy PHI, Business Associate shall extend protections to such information, in accordance with

Section 6.3-2.

6.2 Termination. Upon Covered Entity's knowledge of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligation under this Agreement, Covered Entity shall notify Business Associate of the breach or violation and provide Business Associate a reasonable opportunity to cure the breach, if curable, or end the violation. If curing the breach or ending the violation is not possible, or if Business Associate does not cure a curable breach or end the violation within a reasonable time specified by Covered Entity, Covered Entity may immediately terminate the Main Agreement with Business Associate, if feasible.

6.3 Effect of Termination.

6.3-1 Return or Destroy PHI. Except as otherwise provided in Section 6.3-2, upon termination of the 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 Covered Entity.

6.3-2 Secure PHI if Return or Destruction is Not Feasible. The Parties agree that it may not be feasible to return or destroy all PHI provided to Business Associate by, or created or received by Business Associate on behalf of, Covered Entity. For example, the Parties recognize that return or destruction of PHI maintained in Business Associate's computer files, brief banks, and general correspondence files is not feasible, and Business Associate shall retain such PHI as may be necessary for proper management and administration activities of Business Associate or to carry out Business Associate's own legal responsibilities. Business Associate shall extend the protections of this Agreement to any PHI retained by Business Associate and shall limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Independent Contractor Status. For the purposes of this Agreement, Business Associate is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.

8. Miscellaneous.

8.1 Regulatory References. A reference in this Agreement to a provision in the HIPAA Rules means the provision as in effect or as amended, and for which compliance is required.

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

8.3 Interpretation. The background section is an integral part of this Agreement.

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

8.4 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than Covered Entity and Business Associate and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

8.5 Counterparts and Copies. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and which together shall constitute one instrument. Copies (whether facsimile, photostatic or otherwise) of this Agreement and its exhibits and all signatures on such copies (including counterparts) shall be deemed to be originals and may be relied on to the same extent as the originals, absent manifest fraud.

8.6 Authority to Execute. Each party represents and warrants that it has the authority to execute and bind the party to this Agreement.

IT IS SO AGREED,

AGREED TO ON BEHALF OF THE COVERED ENTITY Signature:

Printed Name: Patty Branton

Title: Support Services Director

Date:

Address: 215 Broadus St

Sturgis, MI 49091

Phone: 269-651-4500

AGREED TO ON BEHALF OF THE BUSINESS ASSOCIATE

|  |  |
| --- | --- |
| Signature: |  |
| Printed Name: |  |
| Title: |  |
| Date: |  |
| Address: |  |
| Phone: |  |