

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is entered into by and between JEWISH SOCIAL SERVICE AGENCY, a Maryland corporation (“Covered Entity”) and [BUSINESS ASSOCIATE, CORPORATE ENTITY TYPE AND STATE OF FORMATION] (“Business Associate”). This Agreement is effective as of [DATE] (“Effective Date”).

### RECITALS

A. Covered Entity is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Covered Entity must comply with the Administrative Simplification Provisions of HIPAA, including the Privacy Rule and Security Rule (as defined in Article 1 of this Agreement), and with the applicable provisions of the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”).

B. Covered Entity has engaged Business Associate to furnish certain services to Covered Entity pursuant to the Services Agreement, as defined below.

C. Business Associate is a business associate under HIPAA. Business Associate must comply with the provisions of the Privacy Rule and Security Rule made applicable to business associates pursuant to HITECH and with all other applicable provisions of HITECH.

D. Covered Entity is not permitted to allow Business Associate to create, receive, maintain, or transmit Protected Health Information on behalf of Covered Entity without satisfactory assurances that Business Associate will appropriately safeguard the information. Therefore, Covered Entity will only disclose Protected Health Information to Business Associate or allow Business Associate to create or receive Protected Health Information on behalf of Covered Entity in accordance with the requirements of HIPAA, HITECH, and provisions of this agreement.

NOW, THEREFORE, in consideration of the mutual promises below and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

Terms used in this Agreement that are specifically defined in HIPAA shall have the same meaning as set forth in HIPAA. A change to HIPAA which modifies any defined HIPAA term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

1.1 “**Breach**” means the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not

reasonably have been able to retain such information. The term “breach” does not include the exceptions described in 42 U.S.C. § 17921(1)(B).

1.2 **“Business Associate”** means the Business Associate, as indicated above. Where the term "business associate" appears without an initial capital letter, it has the meaning given to such term under HIPAA, including, but not limited to, 45 C.F.R § 160.103.

1.3 **“Covered Entity”** means the Covered Entity, as indicated above. Where the term “covered entity” appears without an initial capital letter, it has the meaning given to such term under HIPAA, including, but not limited to, 45 C.F.R § 160.103.

1.4 **“Data Aggregation”** has the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

1.5 **“Designated Record Set”** has the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

1.6 **“Electronic Protected Health Information”** and/or **“E PHI”** has the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, and includes, without limitation, any EPHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity.

1.7 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 C.F.R. Parts 160-164).

1.8 **“HITECH”** means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

1.9 **“Individual”** has the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R § 160.103. It also includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.10 **“Privacy Rule”** means the Standards for Privacy of Individually Identifiable Health Information codified at 45 C.F.R. §§ 160 and 164 (Subpart E) and any other applicable provision of HIPAA and any amendments to HIPAA, including HITECH.

1.11 **“Protected Health Information”** and/or **“PHI”** has the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and includes, without limitation, any PHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use of PHI shall apply equally to EPHI.

1.12 **“Required By Law”** has the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and any additional requirements created under HITECH.

1.13 **“Secretary”** means the Secretary of the Department of Health and Human Services or his designee.

1.14 **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR § 164.304.

1.15 **“Security Rule”** means the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. §§ 160 and 164 (Subpart C) and any other applicable provision of HIPAA and any amendments to HIPAA, including HITECH.

1.16 **“Services Agreement”** means the underlying agreement(s) that outline the terms of the services that Business Associate agrees to provide to Covered Entity and that fall within the functions, activities or services described in the definition of “Business Associate” at 45 CFR § 160.103.

1.17 **“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 from time to time.

## **2. BUSINESS ASSOCIATE OBLIGATIONS**

2.1 Business Associate agrees that it will only use and disclose PHI in accordance with the terms of this Agreement or as is Required By Law. Business Associate acknowledges that it may only use and disclose PHI obtained or created pursuant to an agreement with Covered Entity if the use or disclosure is in compliance with each applicable requirement of the Privacy Rule found in 45 C.F.R. § 164.504(e).

2.2 Business Associate will not use or disclose PHI except for the purpose of performing Business Associate's obligations to Covered Entity as described in the Services Agreement, consistent with the requirements of HIPAA and this Agreement, and for other uses and disclosures permitted under this agreement.

2.3 Business Associate will not use or disclose PHI in any manner that constitutes a violation of the Privacy Rule. To the extent that Business Associate is carrying out any of Covered Entity's obligations, Business Associate will comply with all requirements of the Privacy Rule that apply to Covered Entity. So long as such use or disclosure does not violate the Privacy Rule or this Agreement, Business Associate may use or disclose PHI: (a) as is necessary for the proper management and administration of Business Associate's organization, or (b) to carry out the legal responsibilities of Business Associate, as provided in 45 C.F.R. § 164.504(e)(4). Business Associate may only disclose PHI for these purposes, in accordance with the provisions of 45 C.F.R. § 164.504(e)(4)(ii), if either (i) the disclosure is required by law, or

(ii) Business Associate obtains reasonable assurances from the person to whom Business Associate discloses the PHI that the PHI will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and that the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. As permitted by Covered Entity, Business Associate may use PHI to provide Data Aggregation services relating to the health care operations of Covered Entity, as provided in 45 C.F.R. § 164.504(e)(2)(i)(B).

2.4 Business Associate will only request, use and disclose the minimum amount of PHI necessary for Business Associate to perform the services for which it has been retained by Covered Entity. Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary.

2.5 Business Associate will develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI other than as provided by this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI. Business Associate acknowledges that the Security Rule provisions regarding administrative safeguards, physical safeguards, technical safeguards, and policies and procedures and documentation requirements found in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 apply to Business Associate in the same manner as to Covered Entity.

2.6 Business Associate will, to the extent feasible, adopt a technology or methodology specified by the Secretary pursuant to 42 U.S.C. § 17932(h) that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.

2.7 Prior to making any permitted disclosures, Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to be bound by the same privacy and security restrictions and conditions that apply to Business Associate under this Agreement, including but not limited to those conditions relating to termination of the contract for improper disclosure. Further, Business Associate shall implement and maintain sanctions against agents and subcontractors, if any, that violate such restrictions and conditions. Business Associate shall terminate any agreement with an agent or subcontractor, if any, who fails to abide by such restrictions and obligations. Business Associate shall not provide any PHI to any third party or subcontract any Services without Covered Entity's express written permission.

2.8 Business Associate will report, in writing, to Covered Entity any use or disclosure of PHI that is not authorized by this Agreement. In addition, Business Associate will report in writing, to Covered Entity any Security Incident of which it becomes aware that it, its employees, or its agents or subcontractors experience involving or potentially involving Covered Entity EPHI. The written notice shall be provided to Covered Entity within five (5) business days of becoming aware of the non-authorized use or disclosure or Security Incident.

2.9 Business Associate will provide written notification to Covered Entity within seventy-two (72) hours of discovering a Breach of Unsecured PHI. To the extent possible, this

notice will include the identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, disclosed, or used during the Breach. Business Associate will implement a reasonable system for discovery of Breaches.

2.10 Business Associate will notify Covered Entity in writing of any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations or any legal action against Business Associate arising from an alleged HIPAA violation. Business Associate shall take (i) prompt action to correct any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Business Associate will provide the written notice to Covered Entity within five (5) business days of becoming aware of the violation or legal action.

2.11 Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement

2.12 Business Associate will make PHI in Designated Record Sets that are maintained by Business Associate or its agents or subcontractors, if any, available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy rule, including, but not limited to, 45 C.F.R. § 164.524.

2.13 Within ten (10) days of receipt of a request from Covered Entity for an amendment of PHI or a record about an Individual contained in a Designated Record Set, Business Associate or its agents or subcontractors, if any, shall make such PHI available to Covered Entity for amendment and shall incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If an Individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, if any, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors, if any, shall be the responsibility of Covered Entity. Upon the approval of Covered Entity, Business Associate shall appropriately amend the PHI maintained by it, or any agents or subcontractors.

2.14 Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528. If a request for an accounting is made directly to Business Associate or its agents or subcontractors, Business Associate will notify Covered Entity of the request within five (5) days of having received the request and forward the any relevant information retained by Business Associate to the Covered Entity for compilation and distribution to the Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment or operations disclosures through electronic health records, Business Associate will provide the accounting to the Covered Entity for the Covered Entity to provide to the Individual in accordance with 42 U.S.C. § 17935(c). Notwithstanding Section 4.5, Business Associate and

any agents or subcontractors shall continue to maintain the information required for purposes of complying with this Section 2.14 for a period of six (6) years after termination of the Agreement.

2.15 Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate will notify Covered Entity regarding any PHI that Business Associate provides to the Secretary concurrently with providing the requested PHI to the Secretary. Upon request by Covered Entity, Business Associate will provide Covered Entity with a duplicate copy of the requested PHI.

2.16 Within ten (10) business days of a written request by Covered Entity, Business Associate and its agents or subcontractors, if any, shall allow Covered Entity to conduct a reasonable inspection of 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 Business Associate has complied with this Agreement and HITECH; provided, however, that (i) Business Associate and Covered Entity will mutually agree in advance upon the scope, location and timing of such an inspection; and (ii) Covered Entity will protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection.

2.17 The additional requirements of Title XIII of HITECH that relate to privacy and security and that are made applicable with respect to covered entities are also applicable to Business Associate and by this reference these requirements are hereby incorporated into this Agreement.

2.18 Business Associate agrees that Business Associate does not and will not have any ownership rights in any of the PHI.

### **3. COVERED ENTITY OBLIGATIONS**

3.1 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 C.F.R. § 164.522 and 42 U.S.C. § 17935(a).

3.2 Covered Entity shall provide Business Associate with notice of any changes to, revocation of, or permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted uses or disclosures, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

### **4. TERMINATION**

4.1 The term of this Agreement shall be effective as of the Effective Date of this Agreement and continue until terminated by Covered Entity or any underlying Services Agreement expires or is terminated. Any provision related to the use, disclosure, access, or

protection of EPHI or PHI or that by its terms should survive termination of this Agreement shall survive termination.

4.2 (a) A breach by Business Associate, or its agents or subcontractors, if any, of any provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement. The Covered Entity may immediately terminate this Agreement and any related agreement if it determines that the Business Associate has breached a material term of the Agreement. Alternatively, Covered Entity may choose to provide Business Associate with written notice of the material breach and terminate the agreement if Business Associate has not cured the breach within thirty (30) days of receiving written notice from Covered Entity.

(b) If Covered Entity has knowledge of a pattern of activity or practice by Business Associate that constitutes material breach of this Agreement or violation of Business Associate's obligations under this Agreement, Covered Entity must take reasonable steps to end the relevant activity or practice of the Business Associate. Covered Entity must terminate this Agreement if Business Associate does not cure the relevant activity or practice within a period of thirty (30) days. When neither cure nor termination is feasible, Covered Entity must report the problem to the Secretary.

4.3 Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or (ii) there is a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.

4.4 If Business Associate has knowledge of a pattern of activity or practice by Covered Entity that constitutes material breach of this Agreement or violation of Covered Entity's obligations under this Agreement, Business Associate must take reasonable steps to end the relevant activity or practice of the Covered Entity. Business Associate must terminate this Agreement if Covered Entity does not cure the relevant activity or practice within a period of thirty (30) days. When neither cure nor termination is feasible, Business Associate must report the problem to the Secretary.

4.5 (a) Upon termination of this Agreement for any reason, Business Associate shall return or, at Covered Entity's request, destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. If Business Associate destroys the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed. This provision applies to PHI that is in the possession of agents or subcontractors of Business Associate. Business Associate will retain no copies of the PHI.

(b) If Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall explain to Covered Entity why conditions make the return or destruction of the PHI not feasible. If Covered Entity agrees that the return or destruction of PHI is not feasible, Business Associate will retain the PHI, subject to all of the protections of this

Agreement, and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible for so long as Business Associate maintains the PHI.

(c) If Business Associate determines that it is infeasible to obtain from an agent or subcontractor any PHI in the possession of the agent or subcontractor or to destroy the PHI, Business Associate will provide Covered Entity written notification explaining why obtaining the PHI is infeasible. Business Associate will require the agent or subcontractor to extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible for so long as the agent or subcontractor maintains the PHI.

4.6 If this Agreement is terminated for any reason, Covered Entity also may terminate the Services Agreement between the parties. This provision shall supersede any termination provision to the contrary which may be set forth in the Services Agreement.

## **5. MISCELLANEOUS**

5.1 A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

5.2 Business Associate will not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless Covered Entity has received a valid authorization from the Individual or the exchange is otherwise permitted by law. As permitted by law, Covered Entity may provide remuneration to Business Associate for activities involving the exchange of PHI that Business Associate undertakes on behalf of and at the specific request of Covered Entity pursuant to an agreement.

5.3 Business Associate and any of its subcontractors and agents shall indemnify, hold harmless and defend Covered Entity and its employees, officers, directors, agents, and contractors from and against any and all claims, losses, liabilities, costs, attorneys' fees, and other expenses incurred as a result of or arising directly or indirectly out of or in connection with Business Associate's or its subcontractors' or agents' breach of this Agreement, violation of HIPAA, HITECH or other applicable law, or otherwise related to the acts or omissions of Business Associate or its subcontractors or agents.

5.4 Covered Entity shall indemnify, hold harmless and defend Business Associate and its employees, officers, directors, agents, and contractors from and against any and all claims, losses, liabilities, costs, attorneys' fees, and other expenses incurred as a result of or arising directly or indirectly out of or in connection with Covered Entity's breach of this Agreement, violation of HIPAA, HITECH or other applicable law, or otherwise related to the acts or omissions of Covered Entity.



5.5 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, or their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.6 The parties are independent contractors and nothing in this Agreement shall be deemed to make them partners or joint venturers.

5.7 If any modification to this Agreement is Required By Law or required by HITECH or any other federal or state law affecting this Agreement, or if Covered Entity reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Covered Entity shall notify Business Associate of such proposed modification(s) ("Legally-Required Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice (or within such other time period as may be mandated by applicable state or federal law), deliver to Covered Entity its written rejection of such Legally-Required Modifications.

5.8 Business Associate will comply with all appropriate federal and state security and privacy laws, to the extent that such laws apply to Business Associate or are more protective of Individual privacy than are the HIPAA laws.

5.9 All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by registered or certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below:

If to Business Associate:  
[ADDRESS]

If to Covered Entity, to:  
Jewish Social Service Agency  
200 Wood Hill Road  
Rockville, Maryland 20850

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

5.10 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

5.11 This Agreement contains the entire understanding between the parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any Services Agreement. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by

the party against whom the same is sought to be enforced. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default.

5.12 This Agreement shall be governed by Maryland state law without respect to its conflict of law principles.

(Remainder of the page left intentionally blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

**[BUSINESS ASSOCIATE]**

**JEWISH SOCIAL SERVICE AGENCY**

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

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

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

Name: Todd Schenk

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

Title: CEO