



- g) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- h) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- i) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- j) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **3. Permitted Uses and Disclosures by Business Associate**

- a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in Service Agreement.
- b) Business associate may use or disclose protected health information as required by law.
- c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
- d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.
- e) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes 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.

### **4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

- a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.
- b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.
- c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

### **5. Permissible Requests by Covered Entity**

- a) Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity, except for data aggregation or management and administration and legal responsibilities of the business associate.

### **6. Term and Termination**

- a) **Term.** The Term of this Agreement shall be effective as of March 22, 2017 and shall terminate on March 21, 2019 or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b) **Termination for Cause.** Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within thirty (30) days.

- c) **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:
- 1) Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
  - 2) Return to covered entity the remaining protected health information that the business associate still maintains in any form;
  - 3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
  - 4) Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under “Permitted Uses and Disclosures By Business Associate”] which applied prior to termination; and
  - 5) Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.
- d) **Survival.** The obligations of business associate under this Section shall survive the termination of this Agreement.

## 7. Limitation of Liability

In no event shall either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages including, but not limited to, lost revenue, lost profits, loss of data, or civil or criminal penalties, even if advised by the possibility of such damages for violations of this BA agreement, whether arising under theory of contract, tort (including negligence), or strict liability. Notwithstanding anything in the BA agreement to the contrary, business associate’s aggregate liability to covered entity under this BA agreement, regardless of theory of liability, shall be limited to the most recent monthly fee actually paid to business associate by covered entity.

## 8. Miscellaneous

- a) **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- c) **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- d) **No Third Party Rights/Independent Contractors.** The terms of this BA agreement are intended for the sole benefit of Business Associate and Covered Entity and do not create any third party rights. The parties declare that they are independent contractors and not agents of each other, except as otherwise required by law or regulation.
- e) **Notices.** Any notice required or permitted by this BA agreement to be given or delivered shall be in writing and shall be deemed given or delivered if delivered in person, or sent by courier or expedited delivery service, or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile (if confirmed), to the address set forth below. Each party may change its address for purposes of this BA agreement by written notice to the other party.
- f) **Governing Law.** To the extent not preempted by federal law, the BA agreement shall be governed and construed in accordance with the state laws governing the service agreement, without regard to conflicts of law provisions that would require application of the law of another state.

- g) **Binding Nature and Benefits.** The BA agreement binds and benefits the parties, and their respective successors, and their permitted assigns.
- h) **Severability.** Whenever possible, each provision of this BA agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this BA agreement should be prohibited or found invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the other of such provision or the remaining provisions of this BA agreement; provided, however, that if any such invalid provision is material to an extent that a party would not have entered into the BA agreement absent such provision, then that party may terminate the BA agreement upon ninety (90) calendar days' prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this BA agreement, effective

\_\_\_\_\_.

**Covered Entity:** \_\_\_\_\_

**Appointed Representative:** \_\_\_\_\_

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

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Fax:** \_\_\_\_\_

**Business Associate:** Stubenbordt Consulting, Inc DBA, Denali Creative, INC

**By:** PAUL STUBENBORDT

**Title:** PRESIDENT

**905 TROPHY CLUB DR**

**TROPHY CLUB, TEXAS 76262**

**Fax: 682-831-0903**