

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BA Agreement”) is effective as 2009 (the “Effective Date”) by and between \_\_\_\_\_ (“Covered Entity”) and *pVerify.net Solutions (DBA for HealthSys Corporation)*, Irvine, CA 92606 (“Business Associate”).

### **1. Definitions**

a. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

b. “HIPAA Regulations” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, as in effect or as amended from time to time.

c. Any capitalized terms used, but not otherwise defined, in this BA Agreement shall have the same meaning as those terms have under HIPAA and the HIPAA Regulations.

### **2. Obligations and Activities of Business Associate**

a. *Use or Disclosure.* Business Associate agrees not to use or further disclose Protected Health Information created or received by Business Associate from, or on behalf of, Covered Entity (“PHI”) other than as expressly permitted or required by this BA Agreement or as required by law.

b. *Safeguards.* Business Associate agrees to use appropriate safeguards to prevent any use or disclosure of the PHI other than uses and disclosures expressly provided for by this BA Agreement.

c. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, 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 BA Agreement.

d. *Reporting.* Business Associate agrees to report to Covered Entity any use or disclosure of the PHI in violation of this BA Agreement of which it becomes aware as soon as reasonably practicable.

e. *Subcontractors and Agents.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information.

f. *Access.* If Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, when requested by Covered Entity, to PHI in a Designated Record Set to Covered Entity or to an Individual in order to comply with the requirements under 45 CFR 164.524 and the policies of Covered Entity. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity.

g. *Amendment.* If Business Associate has PHI in a Designated Record Set, when requested by Covered Entity or an Individual, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 and the policies of Covered Entity. Such amendments shall be made by Business Associate in the time and manner designated by Covered Entity.

h. *Audit and Inspection.* Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of Health and Human Services or his or her designee (“Secretary”) for the purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule. Such information shall be made available in the time and manner designated by the Covered Entity or the Secretary.

i. *Documentation of Disclosures.* Business Associate agrees to document such disclosures of PHI and any 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 the policies of Covered Entity.

j. *Accounting.* Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with Section 2.i. of this BA Agreement to permit 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 the policies of Covered Entity. Such information shall be provided in the time and manner designated by the Covered Entity.

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

a. *Services.* Except as otherwise limited in this BA Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of Covered Entity in connection with the performance of the services listed in Exhibit A annexed to this Agreement, as may be amended from time to time, (the “Services”) if such use or disclosure of PHI would not violate HIPAA or the HIPAA Regulations if done by Covered Entity or the Minimum Necessary policies and procedures of the Covered Entity.

b. *Business Activities.* Except as otherwise limited in this BA Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities.

### **4. Obligations of Covered Entity**

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 or that is not otherwise expressly permitted under this BA Agreement.

a. *Term.* This BA Agreement shall be effective as of the Effective Date and shall continue unless or until the BA Agreement is terminated in accordance with the provisions of Section 5.b. or 6.a.

b. *Termination.* Covered Entity may terminate this BA Agreement upon thirty days prior written notice to Business Associate or, upon written notice to Business Associate when Covered Entity determines that no further services will be provided by Business Associate, including termination of any written agreement covering the Services. In addition, upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with an opportunity to cure the breach and then terminate this BA Agreement and its relationship with Business Associate, including any written agreement covering the Services, if Business Associate does not cure the breach within the time period specified by the Covered Entity, (2) terminate this BA Agreement and its relationship with Business Associate, including any written agreement covering the Services, immediately, or (3) if neither termination nor cure is feasible, report the violation to the Secretary.

c. *Effect of Termination.*

(1) Upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BA Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make

