



BUSINESS ASSOCIATE CONTRACT

THIS CONTRACT is made and entered into by and between Living Alternatives for the Developmentally Disabled, Inc. (hereinafter called "PROVIDER"), a covered entity, with its principal place of business located at 300 Whitney Street, Dowagiac, MI 49047

- AND -

_____ (hereinafter called "BUSINESS ASSOCIATE"),
a/an _____ corporation, with its principal place of business located
at _____

Recitals

- A. BUSINESS ASSOCIATE performs, or assists in the performance, of a function or activity or provides services of a type for PROVIDER that makes BUSINESS ASSOCIATE a "business associate" for purposes of the HIPAA privacy regulations.
- B. PROVIDER will disclose protected health information to BUSINESS ASSOCIATE in conjunction with the function, activity, or services performed or provided by BUSINESS ASSOCIATE.
- C. PROVIDER will disclose electronic protected health information to BUSINESS ASSOCIATE in conjunction with the function, activity, or services performed or provided by BUSINESS ASSOCIATE.
- D. PROVIDER and BUSINESS ASSOCIATE desire to enter into a contract as required by the HIPAA privacy and security regulations to provide satisfactory assurance to PROVIDER that BUSINESS ASSOCIATE will appropriately safeguard that protected health information.

Agreement

NOW THEREFORE, PROVIDER and BUSINESS ASSOCIATE agree as follows:

- (1) **Definitions.** All terms and phrases in this Contract shall have the same meanings as defined in 45 CFR §160 and §164, subparts A, C, D, and E. Without limiting the generality of the foregoing, as used in this Contract, the following terms shall have the following meanings:
 - (a) "HIPAA privacy regulations" shall mean the regulations at 45 CFR §160 and §164, subparts A and E.
 - (b) "HIPAA security regulations" shall mean the regulations at 45 CFR §160 and 164, subpart C.
 - (c) "HIPAA Breach Notification Rule" shall mean the regulations at 45CFR §164, subpart D.
 - (d) "HIPAA Rules" shall mean the HIPAA privacy regulations, the HIPAA security regulations, the HIPAA Breach Notification Rule, and the HIPAA enforcement rule at 45 CFR §160, subpart C.
 - (e) "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("HHS") or any other officer or employee of HHS to whom the authority involved has been delegated.
 - (f) "Protected health information" shall mean individually identifiable health information regardless of whether it is maintained in electronic or non-electronic form.

- (g) “Electronic protected health information” shall mean individually identifiable health information that is transmitted by or maintained in electronic media. It includes devices in computers and any removable/transportable digital memory medium. Transmission media include the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and physical movement of removable/transportable media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.
- (h) “Security incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(2) **Restriction on Use and Disclosure of Protected Health Information.** Except as permitted or required by this Contract or as required by law, BUSINESS ASSOCIATE shall not use, de-identify, or further disclose any protected health information disclosed or otherwise made available to it by PROVIDER.

(3) **Authorized Uses and Disclosures.** Except as otherwise limited in this Contract, BUSINESS ASSOCIATE is hereby authorized to use and disclose protected health information for the following purposes:

(a) **Generally -** BUSINESS ASSOCIATE may use or disclose protected health information on behalf of, or to provide services to, PROVIDER for the following purposes, if such use or disclosure of protected health information would not violate the HIPAA privacy regulations if done by PROVIDER or the minimum necessary policies and procedures of PROVIDER.

(b) **Management and Administration -** BUSINESS ASSOCIATE may use and disclose protected health information for the proper management and administration of BUSINESS ASSOCIATE or to carry out the legal responsibilities of BUSINESS ASSOCIATE, provided:

(1) The disclosure is required by law; or,

(2) BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 will immediately notify the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) **Date Aggregation Services.** BUSINESS ASSOCIATE may use and disclose protected health information to provide data aggregation services relating to the health care operations of PROVIDER.

(d) **Violations of Law.** BUSINESS ASSOCIATE may use protected health information to report violations of law to appropriate Federal and State authorities, consistent with

(4) **BUSINESS ASSOCIATE’S Obligations.**

(a) **Representation and Acknowledgment.** BUSINESS ASSOCIATE represents that it has complied and will comply with the requirements of the HIPAA Rules applicable to it and acknowledges that it is aware that it is subject to the tiered civil and criminal penalties of section 1176 and 1177 of the Social Security Act.

(b) **Safeguards.** BUSINESS ASSOCIATE shall use appropriate safeguards, and comply, where applicable, with the HIPAA security regulations with respect to electronic protected health

information, to prevent use or disclosure of protected health information other than as permitted or required by this Contract or as required by law.

- (c) **Security of Electronic Protected Health Information.** BUSINESS ASSOCIATE shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of PROVIDER.
- (d) **Reporting.** BUSINESS ASSOCIATE shall report to PROVIDER any use or disclosure of protected health information not permitted by this Contract of which it becomes aware, including breaches of unsecured protected health information as required by the HIPAA Breach Notification Rule. Furthermore, BUSINESS ASSOCIATE shall report to PROVIDER any security incident of which it becomes aware. This report shall be given to PROVIDER as soon as possible after BUSINESS ASSOCIATE discovers the impermissible use or disclosure but not more than 5 days after the discovery.
- (e) **Subcontractors.** BUSINESS ASSOCIATE shall ensure that any subcontractors, that create or receive protected health information on behalf of BUSINESS ASSOCIATE agree to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such information.
- (f) **Providing Electronic Protected Health Information to Agents or Subcontractors.** BUSINESS ASSOCIATE shall ensure that any agent, including a subcontractor, to whom it provides electronic protected health information, agrees to implement reasonable and appropriate safeguards to protect the electronic protected health information.
- (g) **Individual's Access to Information.** BUSINESS ASSOCIATE shall make available and permit access to protected health information about an individual by that individual in accordance with 45 CFR §164.524.
- (h) **Amendment of Protected Health Information.** BUSINESS ASSOCIATE shall make available to PROVIDER protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.526.
- (i) **Accounting of Disclosures.** BUSINESS ASSOCIATE shall document such disclosures of protected health information and information related to such disclosures as would be required for PROVIDER to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 42 CFR. §164.528.

BUSINESS ASSOCIATE shall make available the information required to provide an accounting of disclosures in accordance with 42 CFR. §164.528. Such information shall be given to PROVIDER by BUSINESS ASSOCIATE within 5 days after PROVIDER notifies BUSINESS ASSOCIATE of PROVIDER's need for the information.

- (j) **Comply with PROVIDER's Obligations.** To the extent BUSINESS ASSOCIATE is to carry out PROVIDER's obligations under the HIPAA privacy regulations, BUSINESS ASSOCIATE shall comply with the requirements of the HIPAA privacy regulations that apply to PROVIDER in the performance of such obligations.
- (k) **Practices, Books and Records.** BUSINESS ASSOCIATE shall make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by BUSINESS ASSOCIATE on behalf of PROVIDER, to the Secretary for the purpose of determining PROVIDER's compliance with the HIPAA privacy regulations.

- (l) **Mitigation.** BUSINESS ASSOCIATE shall mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE or to PROVIDER of a use or disclosure of protected health information in violation of BUSINESS ASSOCIATE's policies and procedures, this Contract, or the HIPAA privacy or security regulations.

(5) **PROVIDER's Obligations.**

(a) **Provisions for PROVIDER to Inform BUSINESS ASSOCIATE of Privacy Practices and Restrictions.**

- (1) PROVIDER shall notify BUSINESS ASSOCIATE of any limitations(s) in its Notice of Privacy Practices of PROVIDER in accordance with 45 CFR §164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE's use or disclosure of protected health information.
- (2) PROVIDER shall notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by an individual to use or disclose protected health information, to the extent that such changes may affect BUSINESS ASSOCIATE's use or disclosure of protected health information.
- (3) PROVIDER shall notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of protected health information that PROVIDER has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect BUSINESS ASSOCIATE's use or disclosure of protected health information.

(b) **Permissible Requests by PROVIDER.**

PROVIDER shall not request BUSINESS ASSOCIATE to use or disclose protected health information in any manner that would not be permissible under the HIPAA privacy regulations if done by PROVIDER.

(6) **Breach Notification.**

- (a) **Notice to PROVIDER.** In the event of its discovery of a breach of unsecured protected health information disclosed or made available to it by PROVIDER, BUSINESS ASSOCIATE shall provide notification of such breach to PROVIDER as required by the HIPAA Breach Notification Rule. Provided, however, notwithstanding anything in that Rule to the contrary or in paragraph (16) of this Contract, such notice shall be given to PROVIDER by BUSINESS ASSOCIATE as soon as possible after BUSINESS ASSOCIATE's discovery of the breach, but in no case more than 5 calendar days after its discovery of the breach.
- (b) **Notice of Breach to Affected Individuals; Costs.** Whether or not notification of the breach shall be given to affected individuals and, if so, the method by which the notification shall be given shall be determined by PROVIDER, in its sole discretion. If required by PROVIDER in its sole discretion, BUSINESS ASSOCIATE shall give any such notice(s) at such times and in such manner as determined by PROVIDER. In all cases, BUSINESS ASSOCIATE shall pay to PROVIDER the costs incurred by PROVIDER due to the breach.
- (c) **Proof of Encryption.** In the event of a breach of secured protected health information, BUSINESS ASSOCIATE shall notify PROVIDER of the breach as stated in subparagraph (6)(a), above, and, within 5 calendar days after giving such notice to PROVIDER, provide proof satisfactory to PROVIDER that such protected health information was not unsecured protected health information.

(7) Term and Termination.

- (a) Generally.** This Contract shall be effective when executed on behalf of both of the parties hereto and shall terminate when all of the protected health information provided by PROVIDER to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of PROVIDER, is destroyed or returned to PROVIDER, or, if it is not feasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Paragraph (7).
- (b) Mutual Agreement.** This Contract may be terminated by mutual written agreement of the parties.
- (c) Termination for Cause.** Upon PROVIDER's knowledge of a material breach of this Contract by BUSINESS ASSOCIATE, PROVIDER shall either:
- (1) Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and terminate this Contract if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by PROVIDER;
 - (2) Immediately terminate this Contract if BUSINESS ASSOCIATE has breached a material term of this Contract and cure is not possible.

(d) Effect of Termination.

- (1) Except as provided in paragraph (2), below, upon termination of this Contract, for any reason, BUSINESS ASSOCIATE shall return or destroy all protected health information received from PROVIDER, or created or received by BUSINESS ASSOCIATE on behalf of PROVIDER that BUSINESS ASSOCIATE maintains in any form. This provision also shall apply to protected health information that is in the possession of subcontractors of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall retain no copies of the protected health information.
- (2) In the event that BUSINESS ASSOCIATE determines that returning or destroying the protected health information is not feasible, BUSINESS ASSOCIATE shall provide to PROVIDER notification of the conditions that make return or destruction not feasible. BUSINESS ASSOCIATE shall extend the protections of this Contract 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 not feasible, for so long as BUSINESS ASSOCIATE maintains such protected health information.

- (8) Injunction.** Notwithstanding any other rights or remedies provided for in this Contract, PROVIDER retains all rights to injunctive relief to prevent or stop the unauthorized use or disclosure of protected health information by BUSINESS ASSOCIATE, or any agent, subcontractor or other third party that received protected health information from BUSINESS ASSOCIATE.
- (9) Indemnification.** BUSINESS ASSOCIATE shall indemnify and hold PROVIDER harmless from and against any and all loss, cost, damage, or expense, including reasonable attorneys' fees, that arise out of: any breach by BUSINESS ASSOCIATE of this Contract, the HIPAA privacy regulations; the HIPAA security regulations, or the HIPAA Breach Notification Rule, or, the need for PROVIDER to enforce any provision of this Contract.
- (10) Subpoena.** In the event BUSINESS ASSOCIATE receives a subpoena for any protected health

information in BUSINESS ASSOCIATE's possession, BUSINESS ASSOCIATE shall immediately notify PROVIDER of the subpoena and deliver a copy of the subpoena to PROVIDER. BUSINESS ASSOCIATE shall respond to the subpoena only in accordance with the HIPAA privacy regulations.

- (11) **Notices.** Any notices required or permitted to be given under this Contract shall be in writing and shall be personally delivered or sent by certified or registered mail, first class postage prepaid, return receipt requested, or by prepaid overnight delivery service such that proof of delivery will be obtained, and shall be addressed as set forth below or to such other address as may be specified in a prior written notice to the other party:

(a) If to PROVIDER:
300 Whitney,
Dowagiac, MI 49047

(b) If to BUSINESS ASSOCIATE

Such notice shall be deemed to be given on the date it is deposited in the mail as stated above, on the date it is given to the overnight delivery service, or the date it is given personally to the party to whom it is directed. A notice shall be deemed to have been given personally to a party if it is handed to the representative of the party to whom the notice must be addressed or if left at his or her office located at the street address to which a notice would be mailed.

- (12) **Amendment.** This Contract may not be changed, modified, or amended except by a written agreement executed on behalf of each of the parties.
- (13) **No Waiver.** No waiver of one or more of the provisions of this Contract or the failure to enforce any provision of this Contract by either party shall be construed as a waiver of any subsequent breach of this Contract, nor a waiver of the right at any time thereafter to require strict compliance with all of its terms.
- (14) **Entire Agreement.** This Contract sets forth the entire agreement and understanding between the parties as to the matters contained in it, and supersedes all prior discussions, agreements, and understandings of every kind and nature between them.
- (15) **Headings.** The headings placed before the various paragraphs and subparagraphs of this Contract are inserted for ease of reference only, do not constitute a part of this Contract, and shall not be used in any way whatsoever in the construction or interpretation of this Contract.
- (16) **Interpretation.** Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with the HIPAA Privacy Rule, 45 CFR § 164.500 *et seq.*, the HIPAA Security Rule, 45 CFR § 164.302 *et seq.*, and the HIPAA Breach Notification Rule, 45 CFR § 164.400 *et seq.*, as each may be amended from time to time.
- (17) **Governing Law.** This Contract shall be construed and enforced in accordance with, and governed by, the laws of the State of Michigan.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives on the dates set forth below.

Attest:

PROVIDER

(signature)

By: _____
(print)

Title: _____

Attest:

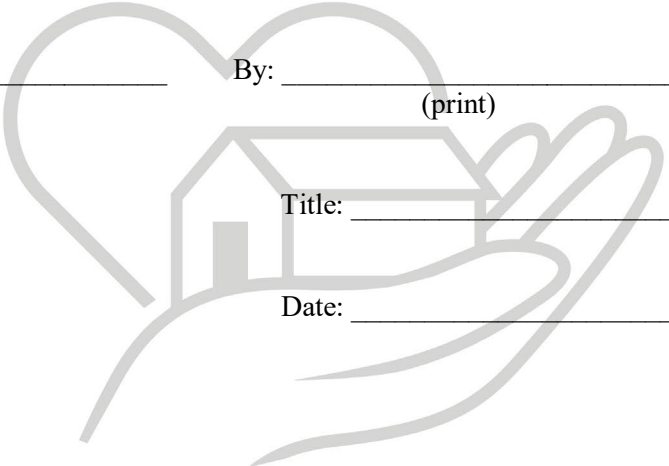
BUSINESS ASSOCIATE

(signature)

By: _____
(print)

Title: _____

Date: _____



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WE MAKE THE DIFFERENCE