

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is effective as of _____ by and between RDS OF FLORIDA INC. (“Business Associate”) and _____ (“Covered Entity”).

This Agreement hereby amends, restates, supersedes and replaces any previous business associate agreements between Covered Entity and Business Associate and is intended to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and its associated regulations.

1. ***Services of Business Associate.*** Business Associate and Covered Entity have entered into a services agreement, pursuant to which Business Associate provides services to Covered Entity which involve the use or disclosure of PHI (defined below), and in connection with such services Business Associate will comply with the responsibilities set forth herein. This Agreement is intended to and shall be interpreted to satisfy the requirements for business associate agreements as set forth in 45 CFR Parts 160 and 164 (“HIPAA Rules”) as they shall be amended. Business Associate understands and acknowledges that Business Associate is subject to the HIPAA Rules, and that the violation of the HIPAA Rules carry significant penalties as described in 45 CFR Section 160.404.

2. ***Definitions.*** Unless defined herein, all capitalized terms shall have the meanings established for purposes of HIPAA and its implementing regulations set forth in 45 CFR Parts 160-164 or the HITECH Act.

a. **Breach** shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 CFR Section 164.402.

b. **Business Associate** shall mean the same as the term “business associate” at 45 CFR Section 160.103, and in reference to the party to this Agreement, shall mean Business Associate.

c. **Covered Entity** shall mean the same as the term “covered entity” at 45 CFR Section 160.103, and in reference to the party to this Agreement, shall mean Covered Entity.

d. **ePHI** shall mean PHI that is transmitted or maintained in electronic media.

e. **PHI** shall mean protected health information, as defined in 45 CFR Section 160.103, and is limited to PHI received from, or received or created on behalf of, Covered Entity by Business Associate pursuant to this Agreement.

f. **Privacy Rule** shall mean the federal privacy regulations issued pursuant to HIPAA, as amended, codified at 45 CFR Parts 160 and 164, subparts A and E.

g. **Security Rule** shall mean the federal security regulations issued pursuant to HIPAA, as amended, codified at 45 CFR Parts 160 and 164, subparts A and C.

3. **Relationship of the Parties.** Business Associate is and at all times during this Agreement shall be acting as an independent contractor to Covered Entity, and not as Covered Entity's agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules. Business Associate shall not have authority to bind Covered Entity to any liability unless expressly authorized by Covered Entity in writing, and Covered Entity shall not be liable for the acts or omissions of Business Associate. Business Associate shall not represent itself as the agent of Covered Entity. Nothing in this Agreement shall be deemed to establish an agency, partnership, joint venture or other relationship except that of independently contracting entities.

4. **Business Associate Responsibilities.** Business Associate hereby agrees to:

a. Use and/or disclose PHI only as expressly permitted or required under this Agreement or, to the extent not contrary to this Agreement, any other binding agreement between Covered Entity and Business Associate.

b. Establish and maintain reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI and provide these safeguards in writing to Covered Entity within a reasonable time following Covered Entity's request.

c. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of ePHI that Business Associate creates, receives, maintains or transmits to or on behalf of Covered Entity. Such safeguards shall be consistent with the safeguards described in 45 CFR Sections 164.304 through 164.316. Business Associate acknowledges that it is directly subject to 45 CFR Sections 164.308, 164.310, 164.312 and 164.316 in the same manner as those sections apply to Covered Entity. Business Associate shall provide these safeguards in writing to Covered Entity within a reasonable time following Covered Entity's request.

d. Request, use and disclose only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the request use or disclosure. Business Associate and Covered Entity shall acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and the HIPAA Rules.

e. Report to Covered Entity (1) any use or disclosure of PHI not provided for by this Agreement of which it becomes aware in accordance with 45 CFR Section 164.504(e)(2)(ii)(C) and (2) any Security Incident of which Business Associate becomes aware in accordance with 45

CFR Section 164.314(a)(2)(C). Business Associate shall report any such improper use or disclosure or Security Incident within three business days of becoming aware of such improper use or disclosure or Security Incident.

f. Report to Covered Entity any Breach of unsecured PHI pursuant to the requirements of 45 CFR Section 164.410. Business Associate shall report any such Breach within three business days of becoming aware of the Breach. In addition, with the consent and at the direction of Covered Entity, Business Associate shall provide all legally required notifications to Individuals and/or the media, on behalf of Covered Entity, in accordance with the data Breach notification requirements set forth in 45 CFR Sections 164.404 and 164.405. Business Associate shall pay for the reasonable and actual costs associated with all Breach notifications and related mitigation. These costs may include, without limitation, mailing costs, personnel costs, credit monitoring costs, attorneys' fees, and other related costs and expenses. Business Associate shall also provide Covered Entity any recommendations that should be made to Individuals for their protection based on the Breach, a description of how Business Associate is and proposes to mitigate any harm to Individuals, and a description of how Business Associate is and will prevent future incidents.

g. Require all of its subcontractors and agents that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate; including but not limited to the extent that Business Associate provides ePHI to a subcontractor or agent, it shall require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the ePHI consistent with the requirements of this Agreement.

h. Make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity or the Secretary, to the Secretary in a time and manner designated by Covered Entity or the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule and/or Security Rule. If the request is made by the Secretary directly to Business Associate, Business Associate shall notify Covered Entity promptly of such request.

i. 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 Section 164.528. Furthermore, Business Associate agrees to provide such information to Covered Entity, within 10 business days upon receipt of the request from Covered Entity, to permit Covered Entity to respond to a request by an Individual for an accounting.

j. In the event that Business Associate uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall, when and as directed by Covered Entity, make an accounting of disclosures of PHI directly to an Individual within 10

business days, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 45 CFR Section 164.528.

k. Make available and provide a right of access to PHI at the request of Covered Entity or an Individual who is the subject of PHI, within 10 business days of such request. Business Associate further agrees to provide access to PHI in a Designated Record Set, in order to meet the requirements under 45 CFR Section 164.524, unless Business Associate does not have PHI in a Designated Record Set.

l. In the event that Business Associate uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall provide an electronic copy of the PHI within 10 business days, to Covered Entity, sufficient to allow Covered Entity to comply with 45 CFR Section 164.524.

m. Make any amendments to PHI that Covered Entity or an Individual directs or agrees to at the request of Covered Entity or Individual, in accordance with 45 CFR Section 164.526.

n. Not directly or indirectly receive remuneration in exchange for any PHI as prohibited by subpart E of 45 CFR Part 164.

o. Not make or cause to be made any communication about a product or service that is prohibited by subpart E of 45 CFR Part 164.

p. Not make or cause to be made any written fundraising communication that is prohibited by subpart E of 45 CFR Part 164.

5. **Covered Entity's Responsibilities.** Covered Entity hereby agrees to:

a. Provide to Business Associate only the minimum PHI necessary to accomplish the purposes of this Agreement.

b. In the event that Covered Entity honors a request to restrict the use or disclosure of PHI pursuant to 45 CFR Section 164.522(a) or makes revisions to its notice of privacy practices in accordance with 45 CFR Section 164.520 that increase the limitations on uses or disclosures of PHI or agrees to a request by an Individual for confidential communications under 45 CFR Section 164.522(b), Covered Entity agrees not to provide Business Associate any PHI that is subject to any of those restrictions or limitations to the extent any may limit Business Associate's ability to use and/or disclose PHI as permitted or required under this Agreement unless Covered Entity notifies Business Associate of the restriction or limitation and Business Associate agrees to honor the restriction or limitation.

c. Be responsible for using Administrative, Physical and Technical Safeguards at all times to maintain and ensure the Confidentiality, privacy and security of PHI transmitted to

Business Associate pursuant to this Agreement, in accordance with the standards and requirements of HIPAA, until such PHI is received by Business Associate.

d. Obtain any consent or authorization that may be required by applicable federal or state laws and regulations prior to furnishing Business Associate the PHI.

6. **Permitted Uses or Disclosures.** Business Associate may:

a. Use and disclose PHI to perform the functions, activities, or services for or on behalf of Covered Entity, for which it has been retained by Covered Entity, provided that such use or disclosure of PHI would not violate the Privacy Rule or Security Rule, including the minimum necessary requirement, if done by Covered Entity.

b. Disclose to subcontractors and agents the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate, provided that any third party to which Business Associate discloses PHI for those purposes provides written assurances in advance that: (1) the information will be held confidentially and used or further disclosed only as Required by Law; (2) the information will be used only for the purpose for which it was disclosed to the third party; and (3) the third party will promptly notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.

c. Disclose PHI as may be Required by Law.

d. Use PHI for data aggregation services where the identity of the owner of PHI is removed in the aggregation.

7. **Mitigation Procedures.** 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 Agreement, the Privacy Rule and/or Security Rule.

8. **Application of Civil and Criminal Penalties.** Business Associate hereby acknowledges that it is subject to civil and criminal penalties in the same manner as Covered Entity if it violates the Privacy Rule, Security Rule, HIPAA or the HITECH Act and that it shall solely be responsible for payment of any such penalties.

9. **Property Rights.** The PHI as between Covered Entity and Business Associate shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this Agreement.

10. **Termination of Agreement.**

a. **Termination for Cause.** Covered Entity may terminate this Agreement (and any related agreement between the parties, including the services agreement) if it determines, in its sole discretion, that Business Associate has improperly used or disclosed PHI in violation of this Agreement or failed to cure the violation within the time specified by Covered Entity in writing. Covered Entity may exercise the right to terminate this Agreement by providing Business Associate written notice of such termination, which such termination shall be effective immediately or at such other date specified in Covered Entity's notice of termination. In addition to terminating this Agreement, Covered Entity may be obligated to report the improper use or disclosure, including a Breach, to the Secretary of Health and Human Services.

b. **Termination without Cause.** Covered Entity may terminate this Agreement by giving Business Associate written notice of such termination at least 90 calendar days prior to the effective date of such termination.

c. **Obligations on Termination.**

1. Return or Destruction of PHI. Upon termination or other conclusion of this Agreement, Business Associate shall, if feasible, return to Covered Entity or destroy all of Covered Entity's PHI in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of such PHI. Business Associate will require any subcontractor or agent, to which Business Associate has disclosed PHI, to return to Business Associate, if feasible, so that Business Associate may return it to Covered Entity, or destroy all such PHI in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of such PHI, and certify on oath to Business Associate that all such information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than 30 calendar days following the effective date of the termination or other conclusion of this Agreement.
2. Procedure When Return or Destruction Is Not Feasible. Business Associate will identify any PHI, including any that Business Associate has disclosed to subcontractors or agents, that cannot feasibly be returned to Covered Entity or destroyed and explain why return or destruction is infeasible. Business Associate will limit its further use or disclosure of such PHI to those purposes that make return or destruction of such information infeasible. Business Associate will require such subcontractor or agent to limit its further use or disclosure of such PHI that such subcontractor or agent cannot feasibly return or destroy to those purposes

that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than 30 calendar days following the effective date of the termination or other conclusion of Agreement.

11. **Indemnification.** Business Associate shall indemnify and hold Covered Entity, its affiliates, officers, directors, employees and agents harmless from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of PHI, including a Security Incident or Breach of unsecured PHI, or any other breach of this Agreement by Business Associate, its affiliates, officers, directors, employees or any subcontractor or agent under Business Associate's control.

12. **Choice of Law.** The laws of the State of Florida shall govern this Agreement.

13. **Disputes; Injunctive Relief.** Any legal suit, action or proceeding arising out of or relating to this Agreement will be instituted in the federal courts of the United States of America or the courts of the State of Florida, in each case located in Miami Dade County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding, and this provision is mandatory. The parties irrevocably and unconditionally waive any objection to the establishing of venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding any rights or remedies provided for in this Agreement, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

14. **Miscellaneous.**

a. **Compliance with Covered Entity Obligations.** If and to the extent that Business Associate performs any obligations of Covered Entity under the Privacy Rule, Business Associate shall comply with the same requirements that apply to the Covered Entity in performing such obligations, as well as any additional requirements that have been provided to Business Associate in writing.

b. **Amendment to Agreement.** Business Associate and Covered Entity agree to take such action as is necessary to amend this Agreement as may be necessary for Covered Entity to comply with the requirements of the Privacy Rule, Security Rule, HIPAA or the HITECH Act.

c. **Survival.** Business Associate's obligation to protect the privacy and safeguard the security of Covered Entity's PHI as specified in this Agreement will be continuous and

survive termination or other conclusion of this Agreement. Business Associate's obligations under Subsections 4.e, 14.a, and 14.d shall survive the termination of this Agreement for any reason, and in the event Business Associate retains PHI after the termination for any reason, Business Associate's obligations under Subsections 4.b, 4.c, 4.f, 4.g, 4.h, 4.i, 10.c, and 11 shall survive the termination of this Agreement for as long as the PHI is maintained.

d. **Retention of Compliance Documentation; Right to Audit.** Business Associate shall maintain, and shall require all subcontractors to maintain all documentation required for or generated for purposes of compliance with this Agreement for a period of six (6) years after termination of this Agreement. Covered Entity shall have the right, upon reasonable notice to Business Associate, to inspect and audit documentation maintained by Business Associate related to compliance with this Agreement during the term of this Agreement.

e. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, HIPAA and the HITECH Act.

f. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.

g. **Binding Nature and Assignment.** This Agreement shall be binding on the parties hereto and their successors and assigns, but neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

h. **Notices.** Whenever under this Agreement one party is required to give notice to the other, such notice shall be deemed given if mailed by first class United States mail, postage prepaid, and addressed as follows (provided, however, that either party may at any time change its address by contacting the other party):

Covered Entity:

Business Associate:

RDS OF FLORIDA INC.

1835 E Hallandale Beach Blvd.

Ste.115

Hallandale Beach, FL 33009

i. **Entire Agreement.** This Agreement consists of this document and constitutes the entire agreement between the parties. There are no understandings or agreements relating to this Agreement which are not fully expressed in this Agreement and no change, waiver or discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the party against whom such change, waiver or discharge is sought to be enforced. This Agreement shall supersede all other agreements between Business Associate and Covered Entity, and in the case of any conflict between this Agreement and the services agreement, this Agreement shall govern.

j. **Further Assurances.** Each party agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, effective as of the date first set forth above.

BUSINESS ASSOCIATE:

COVERED ENTITY:

RDS OF FLORIDA INC.

By: _____

By: _____