



BUSINESS ASSOCIATE AGREEMENT

This Agreement (Agreement) is made this _____ day of _____ 2012 between _____ (Covered Entity) and Pandesa Corporation dba ShareVault (Business Associate).

Business Associate agrees that as of the effective date of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), it shall abide by the provisions of this Agreement with respect to any Protected Health Information or Electronic Protected Health Information (as defined below).

1. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule and Security Rule.

- (a). Business Associate. "Business Associate" shall mean Pandesa Corporation dba ShareVault.
- (b). Covered Entity. "Covered Entity" shall mean _____
- (c). Electronic Protected Health Information. "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (d). Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (e). Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (f). Protected Health Information. "Protected Health Information" or PHI shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (g). Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.501.
- (h). Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Service or his designee.
- (i). Security Rule. "Security Rule" shall mean the Security Standards at 45 C.F.R. parts 160, 162, and 164.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE



(a). Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.

(b). Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

Business Associate agrees to 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 on behalf of Covered Entity.

(c). Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d). Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

Business Associate shall promptly report to Covered Entity any security incident of which it becomes aware. For purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operation in an information system.

(e). Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

Business Associate agrees to ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.

(f) If applicable, Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R.1 64.524.

(g). If applicable, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or



agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity, and in a reasonable time and manner.

- (h). Business Associate agrees to make 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, Covered Entity available to the Secretary, in a reasonable time and manner or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i). Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 C.F.R. 164.528.
- (j). Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement

3.2 Specific Use and Disclosure Provisions

- (a), Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b). Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c). Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to



Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).

- (d). Business Associate may use Protected Health Information to report violations of Law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(l).

4. OBLIGATIONS OF COVERED ENTITY

4.1 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 its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. 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, permission by 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.
- (c). Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information,
- (d). Covered Entity shall obtain any consent, authorization or permission that may be required by the Privacy Rule or applicable state laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to an individual.

4.2 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. TERM AND TERMINATION

- (a). Term. This Agreement shall be effective as of the effective date of the privacy regulations of HIPAA, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance



with the termination provisions in this Section.

(b). Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

(c). Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents 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 infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make it infeasible. If Covered Entity agrees that such return is infeasible, Business Associate shall extend the protections of this Agreement 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 infeasible, for so long as Business Associate maintains such Protected Health **Information**.

6. MISCELLANEOUS

(a). Regulatory References. A reference in this Agreement to a section in the Privacy Rule 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 either Party or both Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c). Survival. The respective rights and obligations of Business Associate under Section 5 of this Agreement shall survive the termination of this Agreement.

(d). Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.



- (e). Construction of Terms. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Regulation issued by HHS or the Office of Civil Rights ("OCR") from time to time.
- (f). No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- (g). Contradictory Terms. Any provision of the Agreement that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superceded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the Privacy Rule and only to the extent that it is reasonable impossible to comply with both the Contradictory Term and the terms of this Agreement.
- (h). ShareVault Agreement. By reference, this Business Associate Agreement Incorporates, but does not supersede or replace, ShareVault's Master Subscription Agreement signed by Covered Entity and ShareVault.

Covered Entity: _____

Pandesa Corporation dba ShareVault

NAME: _____

NAME: _____

By: _____

By: _____

DATE: _____

DATE: _____