

# HIPAA Business Associate Agreement

## Passport to Languages

This Agreement, dated as of \_\_\_\_\_, ("Agreement"), is entered into by and between Passport to Languages ("Business Associate") and \_\_\_\_\_. ("Covered Entity").

On behalf of Covered Entity, Business Associate performs or assists in the performance of functions and activities involving the use and disclosure of Protected Health Information, as defined below. The functions and activities performed by Business Associate may include the delivery, setup, and maintenance of equipment to Covered Entity's hospice patients. Business Associate's provision of these functions and activities may involve the disclosure of Protected Health Information by Covered Entity (or another business associate of Covered Entity) to Business Associate and may involve the transmission by Electronic Media (as defined below) or the maintenance in Electronic Media of Individually Identifiable Health Information (as defined below) by Business Associate. Accordingly, Business Associate is subject to the privacy regulations (the "HIPAA Privacy Regulations") and the security regulations (the "HIPAA Security Regulations") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. Parts 160 and 164. This Agreement is intended to document the business associate assurances required by the HIPAA Privacy Regulations (at 45 C.F.R. § 164.504(e)) and the HIPAA Security Regulations (at 45 C.F.R. § 164.314(a)), and will govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, use, disclose, or receive, Protected Health Information on behalf of Covered Entity. This Agreement will also govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, receive, maintain or transmit, Electronic Protected Health Information on behalf of Covered Entity.

**1. Definitions.** Capitalized terms used in this Agreement, but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Regulations and the HIPAA Security Regulations. For purposes of this Agreement, the following terms shall have the meanings set forth below:

**1.1 Designated Record Set.** "Designated Record Set" has the meaning assigned to such term in 45 C.F.R. § 164.501.

**1.2 Electronic Media.** "Electronic Media" shall have the same meaning as the term "electronic media" in 45 C.F.R. § 160.103.

**1.3 Electronic Protected Health Information or EPHI.** "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.

**1.4 Individual.** "Individual" has the meaning assigned to such term in 45 C.F.R. 164.501 and shall include a person who qualifies as the Individual's personal representative in accordance with 45 C.F.R. § 164.502(g).

**1.5 Individually Identifiable Health Information.** "Individually Identifiable Health Information" shall have the same meaning as the term "individually identifiable health information" in 45 C.F.R. § 160.103.

**1.6 Protected Health Information or PHI.** "Protected Health Information" or PHI shall have the same meaning as the term "Protected Health Information", as defined by 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

**1.7 Required By Law.** "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of Protected Health Information as provided in 45 C.F.R. § 164.501.

**1.8 Secretary.** "Secretary" means the Secretary of the federal Department of Health and Human Services or his designee.

**1.9 Security Incident.** "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.

**2. General.** Except as otherwise specified herein, Business Associate may use and disclose PHI necessary for Business Associate to perform its obligations for or on behalf of Covered Entity (including those functions and activities specified above) as permitted or required by this Agreement, provided that such use or disclosure would violate neither the HIPAA Privacy Regulations if done by Covered Entity nor the minimum necessary policies and procedures of Covered Entity.

**3. Permitted Uses and Disclosures.**

**3.1 De-Identified Information.** Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information ("De-Identified Information") is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

**3.2 Other Permitted Uses.** In addition to the uses described in sections 2 and 3.1 of this Agreement, and except as otherwise limited by this Agreement, Business Associate may use PHI it receives in its capacity as a business associate of Covered Entity, if necessary:

- (a) for the proper management and administration of Business Associate, or
- (b) to carry out the legal responsibilities of Business Associate, or
- (c) to provide Data Aggregation services to Covered Entity which relate to the health care operations of Covered Entity, as provided in 45 C.F.R. § 164.504(e)(2)(i)(B).

**3.3 Other Permitted Disclosures.** Business Associate may disclose PHI it receives in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:

(a) the disclosure is Required by Law, or

(b) Business Associate obtains reasonable assurances from the third party to whom the PHI is disclosed that (i) the PHI will be held confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and (ii) the third party will notify Business Associate of any instance of which the third party is aware in which the confidentiality of the information has been breached.

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

**4.1 Limitations on Uses and Disclosures.** Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

**4.2 Safeguards.** Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

**4.3 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 Agreement.

**4.4 Reporting.** Business Associate will report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware.

**4.5 Agents and Subcontractors.** Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply to Business Associate with respect to such information.

**4.6 Access.** Within ten (10) days of receiving a written request from Covered Entity, Business Associate agrees to provide access to PHI maintained by Business Associate in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements of 45 C.F.R. § 164.524.

**4.7 Amendment of PHI.** Within ten (10) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) to PHI in a Designated Record Set in accordance with 45 C.F.R. § 164.526.

**4.8 Disclosure Documentation.** Business Associate will document its 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 C.F.R. §164.528.

**4.9 Accounting.** Within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will provide to Covered Entity an accounting of disclosures of an Individual's PHI, collected in accordance with Section 4.8 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If Covered Entity requests an accounting of an Individual's PHI more than once in any twelve (12) month period, Business Associate may impose a reasonable, cost-based fee for each subsequent accounting in accordance with 45 C.F.R. § 164.528(c).

**4.10 Access to Business Associate's Internal Practices.** Business Associate will make its internal practices, books, and records relating to the use and disclosure of (a) PHI received from, or created or received by Business Associate on behalf of, Covered Entity; and (b) EPHI created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or to Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of determining Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.

## **5. Obligations of Covered Entity.**

**5.1 Notice of Privacy Practices.** Covered Entity will provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to that notice.

**5.2 Requested Restrictions.** Covered Entity will notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**5.3 Changes or Revocation of Permission.** Covered Entity will provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes or revocation may affect Business Associate's permitted or required uses and disclosures of PHI.

## **6. Security Restrictions on Business Associate.**

**6.1 General.** Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.

**6.2 Agents; Subcontractors.** Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of such EPHI.

**6.3 Reporting of Security Incidents.** Business Associate shall report to Covered Entity any Security Incident affecting EPHI created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, of which Business

Associate becomes aware.

## **7. Termination.**

**7.1 Term.** The provisions of this Agreement shall take effect on the Effective Date (as defined below), and shall terminate when all of the PHI 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 PHI, protections are extended to such information, in accordance with the provisions in this section.

**7.2 Termination for Cause.** If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity may:

(a) Provide notice to Business Associate which (i) sets forth Covered Entity's determination that Business Associate breached a material term of this Agreement; and (ii) provides an opportunity for Business Associate to take reasonable steps to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or

(b) Immediately terminate this Agreement if cure of Business Associate's breach is not possible.

(c) If neither termination nor cure are feasible as provided in (a) and (b) of this section 7.2, Covered Entity may report the violation to the Secretary.

## **7.3 Effect of Termination.**

(d) Except as provided in paragraph (b) of this section 7.3, upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

(e) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide Covered Entity notification of the conditions that make return or destruction infeasible. Upon reasonable determination that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **8. Miscellaneous.**

**8.1 Effective Date.** The provisions of this Agreement will become effective on January 1, 2006 (the "Effective Date").

**8.2 Regulatory References.** A reference in this Agreement to a section in the HIPAA Privacy Regulations or the HIPAA Security Regulations means the section as in effect or as amended.

**8.3 Amendment.** If any new state or federal law, rule, regulation or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy Regulations or the HIPAA Security Regulations, the parties agree to take such action in a timely manner and as is necessary for Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least 30 days' prior written notice.

**8.4 Survival.** The obligations of Business Associate under section 7.3 of this Agreement will survive the termination of this Agreement.

**8.5 Interpretation.** Any ambiguity in this Agreement will be resolved to permit Covered Entity to comply with the HIPAA Privacy Regulations and the HIPAA Security Regulations.

**8.6 No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

**8.7 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon.

**8.8 Indemnity.** Business Associate will indemnify and hold harmless Covered Entity from and against any claim, cause of action, liability, damage, penalty, fine, cost or expense (including reasonable attorneys' fees) arising out of or relating to any non-permitted use or disclosure of PHI or other breach of this Agreement, the HIPAA Privacy Rules, or the HIPAA Security Regulations by Business Associate. Covered Entity will indemnify and hold harmless Business Associate from and against any claim, cause of action, liability, damage, penalty, fine, cost or expense (including reasonable attorneys' fees) arising out of or relating to any non-permitted use or disclosure of PHI or other breach of this Agreement or the Privacy Rules by Covered Entity.

**8.9 Assignment.** This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that no such consent shall be required for either party's assignment or transfer of this Agreement in connection with a sale or other transfer of all or substantially all of the business or assets of the assigning party.

**8.10 Entire Agreement.** This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

**8.11 Severability and Waiver.** The invalidity of any term or provision of

this Agreement will not affect the validity of any other provision. Waiver by any party of strict performances of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

**8.12 Notices.** Any notices permitted or required by this Agreement will be addressed as follows or to such other address as either party may provide by notice to the other:

**If to Covered Entity:**  
**(please enter address information)**

**If to Business Associate:**  
**Passport to Languages**  
6443 SW Beaverton Hillsdale Hwy  
Suite# 390  
Portland, OR 97221  
Attn: Robin Lawson, President/CEO

**8.13 Counterparts.** This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**Passport to Languages**

**Client:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Robin Lawson

Name: \_\_\_\_\_

Title: President/CEO

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