

## BUSINESS ASSOCIATE AGREEMENT

This agreement is entered into as of \_\_\_\_\_, 2014, between **DesAcc, Inc.**, a Washington corporation ("DesAcc"), and \_\_\_\_\_, an \_\_\_\_\_ corporation which is referred to as \_\_\_\_\_ in the following.

### 1. UNDERLYING FACTS/RECITALS

**1.1** DesAcc provides certain **services** for \_\_\_\_\_. In connection with the provision of such services by DesAcc, \_\_\_\_\_ discloses to DesAcc or DesAcc creates or receives on behalf of \_\_\_\_\_ certain Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.A. Sections 1320d-1320d-7, 45 C.F.R., Parts 142 and 160 through 164, as amended ("HIPAA"). For purposes of this agreement, all references to PHI shall mean and include both PHI and EPHI.

**1.2** \_\_\_\_\_ may be a "Covered Entity," as that term is defined in HIPAA. If \_\_\_\_\_ is a Covered Entity, DesAcc, as recipient of PHI from \_\_\_\_\_, is a "Business Associate" of \_\_\_\_\_, as that term is defined in HIPAA.

**1.3** Pursuant to HIPAA, all business associates of \_\_\_\_\_, as a condition of doing business with \_\_\_\_\_, must agree in writing to certain mandatory provisions regarding, among other things, the use and disclosure of PHI.

**1.4** The purpose of this agreement is to satisfy the requirements of the HIPAA Privacy Rule and Security Rule, 45 C.F.R. Parts 160 and 164, and Title XIII of Division A of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act").

### 2. DEFINITIONS

Unless otherwise defined in this agreement, capitalized terms shall have the meanings set forth in HIPAA and the HITECH ACT, as amended.

### 3. APPLICABILITY

As used in this agreement, PHI means and includes (i) Individually Identifiable Health Information created or received by DesAcc for or on behalf of \_\_\_\_\_; (ii) Individually Identifiable Health Information disclosed to DesAcc by \_\_\_\_\_; and (iii) Individually Identifiable Health Information disclosed to DesAcc to enable DesAcc to perform services for \_\_\_\_\_. PHI does not include and

this agreement is not applicable to Individually Identifiable Health Information created or received by or disclosed to DesAcc in connection with services rendered by DesAcc outside the scope of the Business relationship.

#### **4. USE AND DISCLOSURE OF PHI BY DESACC**

DesAcc shall not use or disclose PHI for any purpose other than:

- (a) as permitted or required by this agreement or the Business relationship;
- (b) for the proper management and administration of DesAcc;
- (c) as required or allowed under HIPAA and the HITECH Act; or
- (d) as otherwise permitted or required by law.

In no event shall DesAcc use or disclose PHI in a manner that violates or would violate HIPAA if such activity were engaged in by \_\_\_\_\_. Further, DesAcc shall use and disclose PHI only if such use or disclosure is in compliance with each applicable requirement of 45 C.F.R. Section 164.504(e) (*i.e.*, the HIPAA standard with respect to business associate contracts).

#### **5. SAFEGUARDS FOR THE PROTECTION OF PHI**

DesAcc shall implement and maintain such operational and technological safeguards as are necessary to ensure that PHI disclosed to or created or received by DesAcc is not used or disclosed by DesAcc, or by any subcontractors, affiliates, or business associates of DesAcc, except as provided in the Business relationship and/or this agreement.

#### **6. REPORTING OF UNAUTHORIZED USES OR DISCLOSURES**

DesAcc shall promptly report to \_\_\_\_\_ any use or disclosure of PHI of which DesAcc becomes aware that is not provided for or permitted in the Business relationship, this agreement or HIPAA. DesAcc shall permit \_\_\_\_\_ to investigate any such report in accordance with the provisions of paragraph 14 of this agreement.

#### **7. MITIGATION**

DesAcc shall mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI of which DesAcc becomes aware that is not provided for or permitted in the Business relationship, this agreement, or HIPAA.

## **8. USE OF SUBCONTRACTORS**

DesAcc shall ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by DesAcc on behalf of, \_\_\_\_\_ agree to the same restrictions and conditions that apply to \_\_\_\_\_ with respect to such PHI.

## **9. AUTHORIZED ACCESS TO PHI**

At the request of \_\_\_\_\_ and in the time and manner reasonably designated by \_\_\_\_\_, DesAcc shall return PHI in a Designated Record Set to \_\_\_\_\_ so that \_\_\_\_\_ can provide access to the PHI contained in the Designated Record Set to the individual who is the subject of the PHI in accordance with 45 C.F.R. Section 164.524.

## **10. AMENDMENT OF PHI**

At the request of \_\_\_\_\_ and in the time and manner reasonably designated by \_\_\_\_\_, DesAcc shall return PHI in a Designated Record Set to \_\_\_\_\_ so that \_\_\_\_\_ can amend the PHI in the Designated Record Set in accordance with 45 C.F.R. Section 164.526.

## **11. ACCOUNTING OF DISCLOSURES OF PHI**

DesAcc shall document in writing and provide to \_\_\_\_\_ all information necessary to enable \_\_\_\_\_ to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528 ("Disclosure Accounting"), as required by 45 C.F.R. Section 164.504(e)(2)(ii)(G), upon DesAcc's making of a disclosure for which an accounting is required under 45 C.F.R. Section 164.528 and upon request. DesAcc shall maintain a copy of the Disclosure Accounting for a period of at least 6 years from the date of the disclosure.

At a minimum, the Disclosure Accounting shall contain:

- (i) the date of the disclosure;
- (ii) the name of the entity or person to whom or which the PHI was provided and, if known, the address of such entity or person;
- (iii) a brief description of the PHI disclosed; and

(iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure or, in lieu of such statement, a copy of the Individual's written authorization or request for disclosure pursuant to HIPAA.

## **12. EPHI**

With respect to EPHI, DesAcc shall:

(a) comply with the provisions of 45 C.F.R. Sections 164.308, 164.312 and 164.316 to the extent such provisions are applicable to DesAcc pursuant to Section 13401(a) of Title XIII of Division A of the HITECH Act;

(b) comply with all requirements of the HITECH Act that relate to security and are applicable to \_\_\_\_\_ and DesAcc;

(c) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that DesAcc creates, receives, maintains and/or transmits on behalf of \_\_\_\_\_, as required by the HIPAA Security Rule, 45 CFR Part 164, Subpart C;

(d) ensure that any agent, including a subcontractor, to whom DesAcc provides EPHI agrees to implement reasonable and appropriate safeguards to protect the EPHI; and

(e) report to \_\_\_\_\_ any Security Incident of which DesAcc becomes aware.

## **13. NOTIFICATION OF BREACH OF UNSECURED PHI**

To the extent DesAcc accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses Unsecured PHI, DesAcc shall, following the Discovery of a Breach of such PHI, notify \_\_\_\_\_ of such Breach. Such notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by DesAcc to have been, accessed, acquired or disclosed during such Breach. A notification required pursuant to this paragraph shall be made without unreasonable delay, but in no case later than 60 calendar days after the discovery of a Breach by DesAcc.

## **14. RIGHT TO AUDIT**

DesAcc shall make its practices, books and records related to PHI available to the Secretary of the Department of Health and Human Services and to \_\_\_\_\_ for the purpose of determining DesAcc's compliance with this agreement and HIPAA. If it is determined that DesAcc's conduct would result in violation

of HIPAA by \_\_\_\_\_ or is in violation of this agreement, DesAcc shall promptly remedy any such violation and shall certify the same in writing to \_\_\_\_\_.

## 15. TERM AND TERMINATION

**15.1 Term.** The term of this agreement shall commence as of the date first set forth above and shall terminate when all of the PHI provided by \_\_\_\_\_ to DesAcc or created or received by DesAcc on behalf of \_\_\_\_\_ is destroyed or returned to \_\_\_\_\_ pursuant to paragraph 14.3.

**15.2 Termination Upon Breach.** Upon knowledge by one party (the “Nonbreaching Party”) of the breach of a material provision of this agreement by the other party (the “Breaching Party”), the Nonbreaching Party shall:

(i) if cure of the breach is possible, provide the Breaching Party written notice of such breach and a reasonable opportunity to cure such breach. If the Breaching Party does not cure the breach within a reasonable period of time designated by the Nonbreaching Party, the Nonbreaching Party may terminate the Business relationship immediately, with termination effective as of the date the Nonbreaching Party gives notice of termination to the Breaching Party;

(ii) if cure of the breach is not possible in the reasonable determination of the Nonbreaching Party, the Nonbreaching Party may terminate the Business relationship immediately, with termination effective as of the date the Nonbreaching Party gives written notice of termination to the Breaching Party; and

(iii) if cure of the breach and termination of the Business relationship are not possible in the reasonable determination of the Breaching Party, the Nonbreaching Party shall report the breach to the Secretary and the Business relationship shall not be terminated.

**15.3 Protection of PHI After Expiration or Termination.** Upon termination of the business relationship for any reason, DesAcc shall, at \_\_\_\_\_’s expense, return to \_\_\_\_\_ or, at \_\_\_\_\_’s direction, delete, purge and destroy, all PHI in any form, recorded on any medium, or stored in any storage system. \_\_\_\_\_ or DesAcc may, in their reasonable discretion, determine that return or destruction of the PHI is infeasible, in which event DesAcc shall extend the protections of this agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible. DesAcc shall remain bound by the provisions of this agreement after termination of the business relationship until such time as all PHI has been returned or otherwise destroyed as provided in this paragraph.

## 16. OBLIGATIONS OF \_\_\_\_\_

\_\_\_\_\_ shall notify DesAcc of:

(a) any limitations in its notice of privacy practices, to the extent such limitations may affect DesAcc's use or disclosure of PHI;

(b) any changes in, or revocation of, permission by the Individual who is the subject of the PHI, to the extent such changes may affect DesAcc's use or disclosure of PHI; and

(c) any restriction to the use or disclosure of PHI \_\_\_\_\_ has agreed to in accordance with 45 C.F.R. Section 164.522, to the extent such restriction may affect DesAcc's use or disclosure of PHI.

## **17. GENERAL PROVISIONS**

**17.1 Notices.** All notices, consents, waivers, and other communications required or permitted under this agreement shall be in writing and shall be deemed given to a party: (a) when delivered to the appropriate address by hand; (b) on the first business day after being sent by a nationally recognized overnight courier service (costs prepaid); (c) when sent by facsimile with telephonic confirmation or electronic mail with confirmation of transmission by the transmitting equipment; or (d) three (3) business days after deposit if sent by certified mail, postage prepaid, return receipt requested, whether received or rejected by the addressee, in each case to the addresses, facsimile numbers, or electronic mail addresses, and marked to the attention of the person (by name or title) designated on the signature page of this agreement (or to such other address, facsimile number, electronic mail address, or person as a party may designate by notice to the other parties). Any party may change such party's address for purposes of this agreement by notice given in accordance with this paragraph.

**17.2 Amendment.** The parties acknowledge that state and federal laws related to privacy of PHI are rapidly evolving and that amendment of this agreement may be required to comply with applicable laws. The parties shall negotiate in good faith to amend this agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Business relationship upon written notice. To the extent an amendment to this agreement is required by law and this agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this agreement automatically and without further action required by either of the parties.

**17.3 Effect of Headings.** The subject headings of the paragraphs of this agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**17.4 Successors and Assigns.** This agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns.

**17.5 Severability.** Each provision of this agreement is independent, separate and divisible, and in the event any provision shall be held to be invalid or unenforceable, the remaining provisions shall continue to be in full force and effect.

**17.6 Counterparts.** This agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Execution and delivery of this agreement by delivery of a facsimile or electronically recorded copy (including a .pdf file) bearing a copy of the signature of a party shall constitute a valid and binding execution and delivery of this agreement by such party. Such copies shall constitute enforceable original documents.

**17.7 Construction.** This agreement shall be construed to implement and comply with HIPAA, as applicable to \_\_\_\_\_ and DesAcc. Any ambiguity in this agreement shall be resolved in favor of a meaning that complies with HIPAA.

**17.8 Effect of Agreement.** The sole purpose of this agreement is to ensure compliance with HIPAA. This agreement is not intended to, nor shall it be construed to, reduce or diminish any of DesAcc's obligations under the business relationship. If there is any conflict between the provisions of the business relationship and this agreement, the terms and conditions of this agreement shall control.

**17.9 Governing Law.** This agreement shall be governed by and construed under the laws of the State of Washington. Any action or proceeding in connection with or arising out of this agreement shall be commenced and maintained only in King County, Washington.

IN WITNESS WHEREOF, the parties execute this agreement effective as of the date set forth on the first page of this agreement.

**DesAcc:** \_\_\_\_\_:

DesAcc, Inc. \_\_\_\_\_

By: \_\_\_\_\_  
Hugh Lyshkow

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

Address: 10900 NE 8<sup>th</sup> St.  
Suite 1000  
Bellevue WA 98004

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: 1 (866) 638 0936

Email: [hlyshkow@desacc.com](mailto:hlyshkow@desacc.com)

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_