

MTM NETWORK PARTICIPATION AGREEMENT

This MTM Network Participation Agreement (the "Agreement") by and between OUTCOMES INCORPORATED, an IOWA CORPORATION ("Outcomes") and the accepting party ("Company") is entered into effective the date first accepted by Outcomes by virtue of its posting of this agreement electronically on www.outcomesmtm.com and by Company by virtue of its authorized representative electronically accepting the terms and conditions of this Agreement and thereby acknowledging his or her acceptance of such terms (the "Effective Date") in order for Company to participate in the Outcomes Medication Therapy Management services network.

RECITALS

Outcomes is in the business of Medication Therapy Management Service program administration and provides such administrative service to entities including, but not limited to health plans, insurers and other purchasers of health care services or benefits under Client Agreement(s).

Outcomes has developed a system for the delivery of Medication Therapy Management Services to Members of Clients through entities such as Vendor and other various chain, independent, health system and consultant pharmacists.

Vendor seeks to deliver Medication Therapy Management Services to Members of Clients pursuant to one or more Client Agreements.

Vendor seeks to receive compensation from Outcomes for the delivery of such Medication Therapy Management Services through use of the Outcomes System.

In consideration of the mutual promises, covenants, terms and conditions contained in this Agreement, the parties agree as follows:

ARTICLE I – DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 1.1 "Client" means an individual or entity that has contracted with Outcomes to obtain MTM on behalf of one or more Member.
- 1.2 "Client Agreement" means a contractual agreement between Outcomes and a Client to cover payment for MTM delivered to Members in accordance with this Agreement.
- 1.3 "Medication-related Problem" means a health care issue related to the sub-optimal use of pharmaceuticals and shall include, without limitation, treatment failures, adverse drug reactions, medication errors, medication compliance problems, and cost-efficacy issues.
- 1.4 "Medication Therapy Management" and "MTM" means the services provided by pharmacists to facilitate the achievement of positive therapeutic and economic results from medication therapy as specifically described in Exhibit B.
- 1.5 "Member" and "Members" means a person eligible to receive MTM as notified in writing to Outcomes by Client.
- 1.6 "MTM Center" means a pharmacy, clinic, office, or other consultant setting designated by Vendor to provide MTM using the Outcomes System subject to Outcomes' approval.
- 1.7 "MTM Pharmacist" means a pharmacist designated by the parties to provide MTM using the Outcomes System.
- 1.8 "MTM Provider" means an MTM Pharmacist and/or an MTM Center.
- 1.9 "Outcomes Policies & Procedures" means the policies and standard procedures for the provision of MTM in the Outcomes System as may be amended by Outcomes from time to time.
- 1.10 "Outcomes System" means the system developed by Outcomes for the delivery, documentation, billing, administration, advertising, promotion, or sale of MTM, including all copyrights, icons, forms, guides, logos, materials, media, processes, programming, protocols, reports and their format, pricing, data organization, source code, object code, service claims, techniques, trademarks, training and other associated documents or procedures developed by Outcomes.
- 1.11 "Outcomes Training Program" means instructional course work and curriculum designed and/or designated by Outcomes to train pharmacists and/or other pharmacy personnel on the delivery, documentation, billing, and administration of MTM in the Outcomes System as may be adjusted by Outcomes from time to time.
- 1.12 "Prescriber" means any person legally authorized to prescribe pharmaceuticals for a Member.
- 1.13 "Term" means the term of this Agreement as specified in Article V.
- 1.14 "Vendor/MTM Center" means Vendor and each MTM Center.

ARTICLE II – OUTCOMES OBLIGATIONS

- 2.1 Access. Outcomes shall provide Vendor/MTM Center with web-based access to necessary portions of the Outcomes System for the sole purpose of documenting and administering the provision of MTM by MTM Providers, excluding reasonable periods of system downtime and disruption of internet service beyond Outcomes' reasonable control. Such access shall not

include internet connectivity, which shall be the responsibility of the Vendor/MTM Center. Outcomes may limit MTM Center access to only specific Members and/or Clients. Outcomes reserves the right to reasonably suspend or terminate any MTM Provider's access.

- 2.2 Warranty. Outcomes represents that it has the right to grant Vendor/MTM Center access to the Outcomes System and that, to the best of its knowledge, neither the Outcomes System, nor Vendor/MTM Center's use or possession thereof, will violate or infringe any patent, copyright, trade secret or other proprietary right of any third party.
- 2.3 Contracting. Outcomes represents to Vendor/MTM Center that it has secured a Client Agreement with each Client to cover payment for MTM delivered to Members in accordance with this Agreement. Vendor or MTM Center is a third party beneficiary of such Client Agreements.
- 2.4 Payment Rates. Outcomes shall compensate Vendor or MTM Center for the provision of MTM delivered to Members in accordance with the rates adjudicated within the Outcomes System upon claim approval. Under no circumstances shall Outcomes be required to compensate Vendor or MTM Center for provision of MTM to any person who is not a Member.
- 2.5 Payment Cycle. Outcomes shall compensate Vendor or MTM Center for the provision of MTM on no less than a monthly basis with payment distributed no less than fifteen (15) days following the close of each monthly claims window. Payment will be made by Outcomes to the Vendor or MTM Center using the address information appearing as Accounting Information, Exhibit C.
- 2.6 Limitations. Vendor/MTM Center understands and affirms that Outcomes serves as the payment processor between Client and Vendor/MTM Center for the provision of MTM and that payment for MTM to Vendor/MTM Center is expressly conditioned upon Outcomes' receipt of funds from the Client. In the event of Client default in payment, Outcomes and Vendor/MTM Center agree to cooperate in good faith to obtain payment in-full from Client for all services rendered.
- 2.7 Insurance. Outcomes shall obtain and maintain in effect a policy of insurance for general liability coverage purposes from a recognized carrier in such coverage amounts as is deemed reasonable and customary, or as required by law.

ARTICLE III – COMPANY OBLIGATIONS

- 3.1 MTM Centers. Vendor shall provide Outcomes with a listing of MTM Centers. Such listing shall be attached to this Agreement as Exhibit A and may be amended by Vendor from time to time. Outcomes reserves the right to remove any MTM Center from Exhibit A if, in Outcomes' reasonable discretion, such MTM Center is detrimental to Outcomes or has failed to comply with this Agreement, any applicable laws or regulations, or Outcomes Policies & Procedures.
- 3.2 MTM Provision. Vendor/MTM Center shall ensure that only MTM Pharmacists practicing in conjunction with MTM Centers provide MTM pursuant to this Agreement.
- 3.3 Staffing. Vendor/MTM Center shall maintain a sufficient number of MTM Pharmacists on duty at each MTM Center, along with sufficient facilities, equipment, and support personnel in order to provide MTM to Members in a timely and appropriate manner.
- 3.4 Clients. Vendor/MTM Center herein:
 - (a) authorizes Outcomes to act as its agent to accept all payments from Clients for MTM provided pursuant to this Agreement.
 - (b) authorizes Outcomes to accept all claims activity reports, remittance reports and other reports from Clients for MTM provided pursuant to this Agreement.
 - (c) shall accept compensation from Outcomes as payment in-full for MTM provided pursuant to this Agreement, in accordance with the payment rate adjudicated within the Outcomes System upon claim approval.
 - (d) shall indemnify and hold Clients harmless from any liability resulting from Outcomes' failure to pay Vendor/MTM Center any amounts already paid by Client to Outcomes for MTM provided pursuant to this Agreement.
 - (e) shall abide by applicable terms of the Client Agreements.
 - (f) acknowledges and agrees that Client is a third party beneficiary of this Agreement.
- 3.5 Credentials. Vendor/MTM Center shall, at its own expense, maintain all licenses, certifications, permits and other prerequisites required by law to provide MTM pursuant to this Agreement.
- 3.6 Disclaimers. Vendor/MTM Center acknowledges and agrees that all clinical and therapeutic decisions relating to the provision of MTM shall be the exclusive responsibility of Vendor, MTM Providers, Members, Prescribers and other health care professionals. Neither Outcomes nor Client shall be liable for any acts or omissions of Vendor or any MTM Provider. Neither Outcomes nor Client warrants any aspect, either express or implied, of any MTM provided by any MTM Provider.
- 3.7 Warranty. Vendor warrants that it has the right to and hereby contracts for services on behalf of MTM Centers listed on Exhibit A and binds those MTM Centers to all relevant provisions and obligations herein including, but not limited to, section 6.5 Indemnification.

- 3.8 Insurance. Vendor/MTM Center shall obtain and maintain in effect a policy of insurance for general and professional liability coverage purposes from a recognized carrier in such coverage amounts as is deemed reasonable and customary, or as required by law, for similar entities doing business in the state in which Vendor/MTM Center is located.

ARTICLE IV – CONFIDENTIALITY

- 4.1 Confidential Information. Except to the extent explicitly allowed under the terms of this Agreement, the parties hereto:
- (a) agree to keep in confidence during the Term of this Agreement and subsequent thereto all eligibility, financial, and other information identified by a Party as proprietary to it.
 - (b) shall not disclose to third parties or use such information other than as needed to fulfill its obligations under this Agreement, except as otherwise specifically authorized in writing by the other Party or as required by law.
- Information in the public domain on the effective date of this Agreement or subsequently entering the public domain without breach by any of the parties is not Confidential Information.
- 4.2 Proprietary Nature of Outcomes System. Vendor/MTM Center acknowledges that the Outcomes System (including, without limitation, the system and all rights associated with trade secrets, copyrights, trade names, service marks and trademarks related thereto) constitutes valuable proprietary assets of Outcomes, and that this Agreement shall not and does not provide the Vendor/MTM Center with any ownership interest therein, whether as a licensee or otherwise. Vendor/MTM Center and its respective employees, agents and representatives shall hold all information and material relating to the Outcomes System in confidence with the exception of information and material in the public domain on the effective date of this Agreement or subsequently entering the public domain without breach by Vendor/MTM Center. Further, Vendor/MTM Center agrees not to use for its own or another's benefit or to reveal any such information and material to any other person or entity except for uses explicitly authorized hereunder during the Term of this Agreement. This obligation shall survive the termination of this Agreement.
- 4.3 Equitable Relief. Vendor/MTM Center acknowledges the value of Outcomes' proprietary rights and the irreparable injury that would result from violation of the provisions of Section 4.2. Accordingly, Vendor/MTM Center agrees that Outcomes shall be entitled to seek injunctive or other equitable relief to prevent the threatened or further actual breach of Section 4.2.
- 4.4 Return of Confidential Information. Promptly upon the termination of this Agreement, Vendor/MTM Center shall return to Outcomes all of Outcomes' confidential information and materials and all copies of such information and materials, if any, in its possession. Obligations of Article IV shall survive the termination of this Agreement.
- 4.5 Vendor Protection. Outcomes shall not use any name, trademark, service mark, trade name or other commercial or product designation belonging to Vendor/MTM Center without the prior written consent of Vendor in each instance, except for use in the routine course of business, which may include, but not necessarily be limited to, Client reporting, network management, and publication of directories. Under no circumstances shall Outcomes utilize any Vendor/MTM Center logo without such prior written consent of Vendor.

ARTICLE V – TERM AND TERMINATION

- 5.1 The Term of this Agreement shall commence as of the Effective Date and shall continue until terminated by either Outcomes or Vendor, at any time, with or without cause, upon written notice to the other party.

ARTICLE VI – GENERAL PROVISIONS

- 6.1 Audit. Outcomes or its designee, which may include but not necessarily be limited to, the Centers for Medicare and Medicaid Services (CMS), US Department of Health and Human Services (HHS), US Comptroller General, or Client shall retain rights to reasonably audit once annually for the Term and a period of ten (10) years from the termination of this Agreement any pertinent contracts, books, documents, papers, and records of Vendor/MTM Center that pertain to any aspect of the Vendor's/MTM Center's duties or obligations under this Agreement. Vendor/MTM Center agrees to maintain such records for the period contemplated and make them available for inspection and audit upon ten (10) days written notice.
- 6.2 Counterparts. This Agreement or any addendum or amendment to this Agreement may be executed in counterparts, all of which taken together shall be deemed one original agreement, and shall be binding upon the parties hereto notwithstanding that all parties hereto are not signatory to the same counterpart.
- 6.3 Exclusivity. This Agreement is not exclusive and nothing herein shall be construed to prohibit the parties hereto from entering into similar agreements with other parties.
- 6.4 Gender and Number. Whenever used in this Agreement and as required by context, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 6.5 Indemnification. The parties hereto agree to indemnify and hold the other party harmless from and against any claims, damages, losses, liabilities and expenses, including court costs and reasonable attorneys' fees, incurred by the other party to the extent that such claims, damages, losses, liabilities or expenses arise out of or are based upon the indemnifying party's gross negligence or willful misconduct in the performance of such indemnifying party's duties under this Agreement. These indemnification obligations shall survive termination of the Agreement.
- 6.6 Independent Contractors. Nothing in this Agreement shall create or be deemed or construed to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting

the provisions of this Agreement. Neither the parties, nor any of their respective representatives, shall be construed to be the agent, employee, or representative of the other, nor shall any of the foregoing parties have any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other.

- 6.7 Jurisdiction. This Agreement is intentionally silent with regard to jurisdiction and venue and shall be governed in accordance with conflict of law provisions.
- 6.8 Laws and Regulations. The parties shall comply with all federal, state and local laws, rules, and regulations which are applicable to carrying out its obligations under this Agreement. In the event it is determined by any governmental agency that any regulatory license or approval of this Agreement or any activity undertaken by the parties under this Agreement's terms and conditions is required, then the parties:
- (a) shall be bound by and govern themselves in accordance with the requirements of the regulating entities unless and to the extent that the parties challenge such requirements, and
 - (b) agree to cooperate and assist one another in obtaining such license and complying with such approvals and to modify this Agreement to the extent necessary to accommodate any such license or approvals.
- 6.9 HIPAA. Both parties warrant they are familiar with requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract. Both parties warrant they will cooperate with either party in the course of performance and coordination with either party's privacy officials and other documents that are necessary to keep both parties in compliance with HIPAA, including but not limited to the Business Associate Addendum (attached hereto as Exhibit D), which both parties agree to execute contemporaneous with this Agreement.
- 6.10 Notices. Any notice required or permitted hereunder shall be made in writing by certified mail, return receipt requested, addressed to the parties as hereinafter specified. Alternatively, such correspondence may be sent via regular mail, facsimile, electronic mail, or other manner with receipt confirmation from the receiving party. The parties shall notify the other in writing of any changes to the below notice information.

If to Outcomes: OUTCOMES INCORPORATED
ATTENTION: LEGAL DEPARTMENT
505 MARKET STREET, SUITE 200
WEST DES MOINES, IA 50266-3861

FACSIMILE: 515-237-0002
ELECTRONIC MAIL: legal@outcomesmtm.com

- 6.11 Section Headings. The section headings used in this Agreement have been inserted for convenience of reference only and shall not in any way modify or restrict any of its terms or provisions.
- 6.12 Severability. In the event one or more of the provisions contained in this Agreement are declared invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired thereby unless the effect of such invalidity is to substantially impair or undermine any of the party's rights and benefits hereunder.
- 6.13 Waiver. The failure of any party hereto to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant, or condition and the obligations of such party with respect thereto shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the Effective Date.

EXHIBIT A – MTM CENTERS (ATTACH ADDITIONAL INFORMATION AS NECESSARY)

EXHIBIT B – MEDICATION THERAPY MANAGEMENT SERVICES

- B.1 "Comprehensive Medication Review" means a consultation between an MTM Pharmacist and a Member to review and organize the Member's medication usage and identify and resolve and/or prevent the occurrence of one or more Medication-related Problem(s). Such consultation must be provided and documented in accordance with the Outcomes System.
- B.2 "OTC Consultation" means a patient assessment, educational session, and monitoring service between an MTM Pharmacist and a Member to identify and resolve and/or prevent the occurrence of one or more Medication-related Problem(s) through the use of non-prescription medication(s). Such consultation must be provided and documented in accordance with the Outcomes System.
- B.3 "Patient Compliance Consultation" means a consultation between an MTM Pharmacist and a Member to identify and resolve and/or prevent the occurrence of one or more Medication-related Problem(s). Such consultation must be provided and documented in accordance with the Outcomes System.
- B.4 "Patient Education & Monitoring" means an educational session and monitoring service between an MTM Pharmacist and a Member to identify and resolve and/or prevent the occurrence of one or more Medication-related Problem(s) under

circumstances where the Member has received an order from a prescriber for new drug therapy or change of an existing drug therapy. Such service must be provided and documented in accordance with the Outcomes System.

- B.5 "Prescriber Consultation" means a consultation between an MTM Pharmacist and a Member's Prescriber to identify, resolve, and/or prevent the occurrence of one or more Medication-related Problem(s) in which the Prescriber agrees to change the Member's pharmaceutical regimen as a direct result of the consultation. Such consultation must be provided and documented in accordance with the Outcomes System.
- B.6 "Patient Refusal" means a Member's refusal of one or more MTM service. The offer and refusal of MTM must be documented in accordance with the Outcomes System.
- B.7 "Prescriber Refusal" means a consultation between an MTM Pharmacist and a Member's Prescriber to identify, resolve, and/or prevent the occurrence of one or more Medication-related Problem in which the Prescriber refuses to change the Member's pharmaceutical regimen as a direct result of the consultation. Such consultation and refusal must be provided and documented in accordance with the Outcomes System.

EXHIBIT C – ACCOUNTING INFORMATION

C.1 Accounting Information. Outcomes shall utilize the below Vendor/MTM Center accounting information for payment and related accounting matters:

ENTITY NAME: _____
ATTENTION: _____
ADDRESS: _____

PHONE: _____
FACSIMILE: _____
ELECTRONIC MAIL: _____
TAX ID: _____

C.2 Default. In the event no accounting information is provided by Vendor/MTM Center in Section C.1, Outcomes shall utilize the address information listed on Exhibit A for payment and related accounting matters.

EXHIBIT D – BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("BAA") supplements and is made a part of the Agreement by and between Vendor and Outcomes.

RECITALS

Vendor is a Covered Entity and seeks to disclose certain information to Outcomes as a Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

Vendor and Outcomes intend to protect the privacy and provide for the security of PHI disclosed by Vendor to Outcomes pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Vendor to enter into a contract containing specific requirements with Outcomes prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

ARTICLE D I – DEFINITIONS

For purposes of this Addendum, the following terms shall have the meanings set forth below:

- D.1.1 "Breach" shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- D.1.2 "Business Associate" shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- D.1.3 "Covered Entity" shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- D.1.4 "Data Aggregation" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- D.1.5 "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

- D.1.6 "Electronic Protected Health Information" means Protected Health Information that is maintained in or transmitted by electronic media.
- D.1.7 "Electronic Health Record" shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- D.1.8 "Health Care Operations" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- D.1.9 "Privacy Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- D.1.10 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Section 160.103, 164.501].
- D.1.11 "Protected Information" shall mean PHI provided by Vendor to Outcomes.
- D.1.12 "Security Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- D.1.13 "Unsecured PHI" shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

ARTICLE D II – OBLIGATIONS

- D.2.1 Permitted Uses. Outcomes shall not use Protected Information except for the purpose of the performing Outcomes' obligations under the MTM Services Agreement and as permitted under the Agreement and this BAA. Further, Outcomes shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Vendor. However, Outcomes may use Protected Information (i) for the proper management and administration of Outcomes, (ii) to carry out the legal responsibilities of Outcomes, or (iii) for Data Aggregation purposes [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- D.2.2 Permitted Disclosures. Outcomes shall not disclose Protected Information except for the purpose of performing Outcomes' obligations under the Agreement and as permitted under the Agreement and the BAA. Outcomes shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Vendor. However, Outcomes may disclose Protected Information (i) for the proper management and administration of Outcomes; (ii) to carry out the legal responsibilities of Outcomes; (iii) as required by law; or (iv) for Data Aggregation purposes. If Outcomes discloses Protected Information to a third party, Outcomes must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such party, and (ii) a *written* agreement from such third party to immediately notify Outcomes of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B); 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- D.2.3 Prohibited Uses and Disclosures. Outcomes shall not use or disclose Protected Information for fundraising or marketing purposes. Outcomes shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates 42 U.S.C. Section 17935(a). Outcomes shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Vendor and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Vendor to Outcomes for services provided pursuant to the Agreement.
- D.2.4 Appropriate Safeguards. Outcomes shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Outcomes shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- D.2.5 Reporting of Improper Access, Use or Disclosure. Outcomes shall report to Vendor *in writing* of any access, use or disclosure of Protected Information not permitted by the Agreement and BAA, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [45 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- D.2.6 Business Associate's Agents. Outcomes shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree *in writing* to the same restrictions and conditions that apply to Outcomes with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)].

- D.2.7 Access to Protected Information. If Outcomes maintains a Designated Record Set for Vendor, then Outcomes shall make Protected Information maintained by Outcomes or its agents or subcontractors in Designated Record Sets available to Vendor for inspection and copying *within ten (10) days of a request by Vendor* to enable Vendor to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Outcomes maintains an Electronic Health Record, Outcomes shall provide such information in electronic format to enable Vendor to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- D.2.8 Amendment of PHI. Within ten (10) days of receipt of a request from Vendor for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Outcomes or its agents or subcontractors shall make such Protected Information available to Vendor for amendment and incorporate any such amendment necessary to enable Vendor to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any, individual requests an amendment of Protected Information directly from Outcomes or its agents or subcontractors, Outcomes must notify Vendor in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Outcomes or its agents or subcontractors shall be the responsibility of Vendor [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- D.2.9 Accounting Rights. Within ten (10) days of notice from Vendor of a request for an accounting of disclosures of Protected Information, Outcomes and its agents or sub shall make available to Vendor the information required to provide an accounting of disclosures to enable Vendor to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Vendor. Outcomes agrees to implement a process that allows for an accounting to be collected and maintained by Outcomes and its agents or subcontracts for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Outcomes maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person, (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivery directly to Outcomes or its agents or subcontractors, Outcomes shall within five (5) days of a request forward it to Vendor in writing. It shall be Vendor's responsibility to prepare and deliver any such accounting requested. Outcomes shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph (i) shall survive the termination of this Agreement.
- D.2.10 Governmental Access to Records. Outcomes shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Vendor and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Outcomes' compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Outcomes shall provide to Vendor a copy of any Protected Information that Outcomes provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- D.2.11 Minimum Necessary. Outcomes (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. The definition of "minimum necessary" is in flux and Outcomes shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- D.2.12 Notification of Breach. During the term of the Agreement, Outcomes shall notify Vendor within 5 days of discovery of any suspected or actual unauthorized use or disclosure of PHI of which Outcomes becomes aware. Outcomes shall take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations and specifically of Vendor's obligations under HIPAA, the Privacy Rule or the Security Rule.
- D.2.13 Breach of Pattern or Practice by Covered Entity. Pursuant to 42 U.S.C. Section 17934(b), if the Outcomes knows of a pattern of activity or practice of the Vendor that constitutes a material breach or violation of the Vendor's obligations under the Agreement or BAA or of Vendor's obligations under the HIPAA, the Privacy Rule or the Security Rule, the Outcomes must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Outcomes must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. One of the reasonable steps shall be providing written notice to Vendor of any pattern of activity or practice of the Vendor that Outcomes believes constitutes a material breach or violation of the Vendor's obligations under the Agreement or BAA or other arrangement and meeting with Vendor to discuss and attempt to resolve the problem, provided such meeting and cure are implemented within 30 days of written notice from Outcomes.

ARTICLE D III – TERMINATION

- D.3.1 Material Breach. A breach by Outcomes of any provision of this BAA, as determined by Vendor, shall constitute a material breach and shall provide grounds for *immediate* termination of the BAA, any provision in the BAA or Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)]. A breach by Vendor described in D.2.13 and uncured as specified therein shall provide grounds for immediate termination of the BAA by Outcomes.
- D.3.2 Effect of Termination. Upon termination of the BAA for any reason, Outcomes shall, at the option of Vendor, return or destroy all Protected Information that Outcomes or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, for reasons described by Outcomes in writing, Outcomes shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Vendor elects destruction of the PHI, Outcomes shall certify in writing to Vendor that such PHI has been destroyed.

ARTICLE D IV – GENERAL PROVISIONS

- D.4.1 Certification. To the extent that Vendor determines that such examination is necessary to comply with Vendor's legal obligations pursuant to HIPAA relating to certification of its security practices, Vendor or its authorized agents or contractors with reasonable notice, may, at Vendor's expense, examine Outcomes' facilities, systems, procedures and records, but only to the extent necessary for such agents or contractors to certify to Vendor the extent to which Outcomes' security safeguards comply with HIPAA, the HITECH Act, and the HIPAA Regulations.
- D.4.2 Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon request of either party, the other party agrees to promptly enter into negotiations concerning the terms of such an amendment to this BAA. Either party may terminate the BAA upon thirty (30) days written notice in the event (i) the other party does not promptly enter into negotiations to amend the BAA when requested pursuant to this Section and related to an amendment contemplated herein or (ii) Outcomes does not enter into an amendment to the BAA providing assurances regarding the safeguarding of PHI that satisfies the standards and requirements of applicable laws.
- D.4.3 No Third-Party Beneficiaries. Nothing express or implied in the Agreement or BAA is intended to confer; nor shall anything herein confer; upon any person other than Vendor, Outcomes and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- D.4.4 Effect on Agreement. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.
- D.4.5 Interpretation. The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the Effective Date.

END