

## Infinedi HIPAA Business Associate Agreement

This Business Associate Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ ("Company") and Infinedi, LLC, a Limited Liability Corporation, ("Contractor").

### RECITALS

- I. Company is a Healthcare Provider Clinic that provides health services with a principal place of business at:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- II. Contractor is an Electronic Claims Submission Company with a principal place of business at 1437 S Boulder Avenue, Suite 1030, Tulsa, OK 74119-3616.
- III. Company, as a Covered Entity defined herein under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is required to enter into this Agreement to obtain satisfactory assurances that Contractor, a Business Associate under HIPAA, will appropriately safeguard all Protected Health Information ("PHI") as defined herein, disclosed, created or received by Contractor on behalf of, Company.
- IV. Company desires to engage Contractor to perform certain functions for, or on behalf of, Company involving the disclosure of PHI by Company to Contractor, or the creation or use of PHI by Contractor on behalf of Company, and Contractor desires to perform such functions.

In consideration of the mutual promises below and the exchange of information pursuant to this agreement and in order to comply with all legal requirements for the protection of this information, the parties therefore agree as follows:

A. Definition of Terms

- 1. Agreement means the Business Associate Agreement.
- 2. Business Associate shall have the meaning given to such term in 45 C.F.R. § 160.103.
- 3. C.F.R. shall mean the Code of Federal Regulations. All references to the C.F.R. are in their then current version.
- 4. Designated Record Set shall have the meaning given to such term in the 45 C.F.R. § 164.501.
- 5. Covered Entity shall have the meaning given to such term in 45 C.F.R. § 160.103.

6. Protected Health Information or PHI shall have the meaning given to such terms in 45 C.F.R. § 164.501.
7. Privacy and/or Security Laws shall mean HIPAA, the HIPAA regulations and any other applicable state or federal laws or regulations affecting or regulating the privacy or security of health information.
8. Breach Rule shall have the meaning given such term in 45 C.F.R. Part 160 and Part 164 Subpart D § 164.400-414 and § 164.530.

B. Obligations of Contractor

1. Permitted Uses and Disclosures. Contractor may not use or disclose PHI received or created pursuant to this agreement except as set forth in Exhibit "A" to the Agreement.

C. Obligations of Company

1. Company shall inform Contractor of any of the following changes which affect Contractor:

Changes to its Notice of Privacy Practices that affect Contractor, new or changed authorizations, restrictions on use of PHI agreed to by the Company; or patient opt-outs concerning fundraising or market solicitations.

D. Term and Termination

1. Term. This Agreement shall be for a term of one (1) year, commencing on \_\_\_\_\_ and ending on \_\_\_\_\_ ("Initial Term"). This Agreement shall automatically renew for successive one (1) year periods ("Renewal Term") unless one party notifies the other party of its intent not to renew within sixty (60) days prior to the end of the Initial Term or any Renewal Term.
2. Termination for Breach of Privacy or Security. Company, at its sole option and without an opportunity to cure, immediately may terminate this Agreement without further liability if Company determines that Contractor has violated a material term of this Agreement related to the privacy or security of the PHI.
3. Termination Without Cause. Either party to this Agreement may terminate the Agreement upon provision of sixty (60) days prior written notice.
4. Termination for Cause. Either party may terminate this agreement for a material breach after thirty (30) days written notice of the breach and an opportunity to cure during the thirty (30) day period.

Either party may terminate this Agreement immediately upon written notice if the other has a receiver or trustee appointed for any or all its property, becomes insolvent or otherwise is unable to pay its debts as they mature, makes an assignment for benefit of creditors, becomes subject to bankruptcy proceedings or dissolved or liquidated.

5. Effects of Termination; Disposal of PHI. Upon termination of this Agreement, Contractor shall recover all PHI that is in the possession of Contractor's agents, affiliates, subsidiaries or subcontractors. Contractor shall return to company or destroy all PHI that Contractor obtained or maintained pursuant to this Agreement on behalf of Company. If the parties agree at that time that the return or destruction of PHI is not feasible, Contractor shall extend the protections provided under this Agreement to such PHI, and limit further use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If the parties agree at the time of termination of this Agreement that it is infeasible for the Contractor to recover all PHI in the possession of Contractor's agents, affiliates, subsidiaries or subcontractors, Contractor shall provide written notice to Company regarding the nature of the unfeasibility and Contractor shall require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required of Contractor hereunder.
6. Mitigating Effects of Termination. In the event of termination of this Agreement, the parties agree to work together to effectuate a smooth transition for both parties and continuous protection of the PHI disclosed to or maintained by Contractor.

E. Insurance and Indemnification

1. Insurance.
2. Indemnification. Each party will indemnify and hold harmless the other party to this Agreement from and against all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in conjunction with:
  - any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and
  - any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.
3. Breach Investigation and Notification. Contractor further agrees to indemnify and hold harmless Company from and against any and all claims, losses, liabilities, costs and other expenses arising out of a breach of unsecured PHI maintained, stored, accessed, transmitted or used by Contractor. At the request of the Company, Contractor further agrees to carry out the notification

to affect individuals and to the media as required by state and federal law, and to bear the burden of demonstrating that all notifications were made as required by law.

F. Miscellaneous

1. Contractor's Compliance with HIPAA. Company makes not warranty or representation that compliance by Contractor with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI.
2. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow or to such other addresses as the parties may hereinafter designate in writing:

Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor: Infinedi, LLC  
1437 S Boulder Avenue, Suite 1030  
Tulsa, OK 74119-3616

Any such notice shall be deemed to have been given, if mailed as provided herein, as the date mailed.

3. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to Agreement, Company shall notify Contractor of any actions it reasonably deems are necessary to comply with such changes, and Contractor promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, either party may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues. If, within fifteen (15) days following the notice, the parties are unable to agree upon such amendments, either party may terminate this Agreement by giving the other party at least thirty (30) days written notice.

4. Amendments. By mutual consent of the parties, this Agreement may from time to time be modified or amended in writing and such written modifications signed by the parties shall be attached to and become part of this Agreement.
5. Severability. In the even any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
6. Counterparts. This Agreement may be executed in counterparts, any of which is considered to be an original agreement.
7. Governing Law. The Agreement shall be construed broadly to implement and comply with the requirements relating to the HIPAA laws and regulations. All other aspects of this Agreement shall be governed under the laws of the State of Oklahoma and venue for any actions relating to this Agreement shall be in Tulsa County, Oklahoma.
8. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Contractor may not assign or subcontract the rights or obligations under this Agreement without the express written consent of Company. Company may assign its rights and obligations under this Agreement to any successor or affiliated entity.
9. Entire Agreement. This Agreement contains the entire agreement between parties and supersedes all prior discussions, negotiations and services for like services.
10. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
11. Assistance in Litigation or Administrative Proceedings. Contractor shall make itself and any agents, affiliates, subsidiaries, subcontractors or employees assisting Contractor in the fulfillment of its obligations under this Agreement, available to Company, at no cost to Company, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Company, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, except where Contractor or its agents, affiliates, subsidiaries, subcontractors or employees are a named adverse party.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement to be effective as of \_\_\_\_\_.

CONTRACTOR

COMPANY

\_\_\_\_\_ Infinedi, LLC \_\_\_\_\_

\_\_\_\_\_

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

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

Printed Name: Brad Cost \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

## Exhibit "A"

1. Contractor's Operations – Permitted Uses of PHI. Contractor may use the PHI it obtains in its capacity as a Business Associate for the proper management and administration of Contractor or to carry out Contractor's legal responsibilities.
2. Contractor's Operations – Permitted Disclosure of PHI. Contractor may disclose the PHI it obtains in its capacity as a Business Associate if such disclosure is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, and:

the disclosure is required by law; or

Contractor obtains reasonable assurance from the recipient of the PHI that the PHI will be held confidentially and used or further disclosed only as required by law or with such further authorizations required by law, and any such disclosure shall be only for the purpose for which it was initially disclosed to the recipient;

the recipient notifies the Contractor (and Contractor in turn notifies Company) of any instance of which is aware in which the confidentiality of the PHI has been breached; and

Except for treatment disclosures, the Contractor and its agents agree to use, disclose or request only the limited data set [as defined in 45 C.F.R. § 164.514(e)(2)], or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, disclosure or request, and further agree that the party disclosing the PHI determines what constitutes the minimum necessary to accomplish the intended purpose of the disclosure. Contractor understands that the HHS Secretary is mandated to issue guidance on what constitutes "minimum necessary" sometimes in 2010, and agrees that Contractor and its agents will be bound by that guidance when it is issued and becomes effective.

3. Additional Obligations Imposed by ARRA. Contractor agrees to abide by all the following:
  - a. Contractor will not disclose PHI to a health plan if the individual to whom the PHI pertains has so requested and (1) the disclosure would be for the purpose of payment or health care operations, and not for the purpose of treatment, (2) the protected health information at issue pertains to a health care item or service for which the individual pays out-of-pocket and in full and (3) the disclosure is not required by law.
  - b. Contractor agrees to comply with all rules governing marketing communications, that is, written communications about a product or service that encourages the recipient to purchase or use the product or service.
  - c. Contractor agreement to clearly and conspicuously provide any recipient of health care fundraising communications the opportunity to opt out of receiving any further such solicitations.

- d. Contractor understands and agrees that effective February 17, 2010, it will be held to the same standards as Company to rectify a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations under the contract, it will be subject to the same penalties as a covered entity for any violation of the HIPAA Privacy or Security requirements, and it will also be subject to periodic audits by the HHS Secretary.
  - e. Contractor understands and agrees that the HHS Secretary will adopt a rule regarding the sale of PHI, and further agrees that Contractor will comply with that rule as soon as it becomes effective.
4. Access to PHI by Individuals. Contractor shall cooperate with Company to fulfill all requests by individuals for access to the individual's PHI that are approved by Company. Contractor shall cooperate with Company in all respects necessary for Company to comply with 45 C.F.R. § 164.524 and applicable State law. Contractor further agrees that to the extent Contractor maintains PHI of Company in an electronic health record (EHR), the Company must comply with patients' requests for access to their PHI by giving them, or any entity that they designate clearly, conspicuously and specifically, the information in an electronic format, and must not charge the requestor more than the labor costs in responding to the request for the copy (or summary or explanation).

Because HIPAA requires that copies of requested be forwarded to patients within a limited number of days of their requests, Contractor agrees to forward any copies requested by Company for this purpose within five (5) business days. If Contractor receives a request from an individual for access to PHI, Contractor immediately shall forward such request to Company. Company shall be solely responsible for determining the scope of PHI and Designated Record Set with respect to each request by an individual for access to PHI. [If Contractor maintains PHI in a Designated Record Set on behalf of Company, Contractor shall permit any individual, upon notice by Company, to access and obtain copies of the individual's PHI in accordance with 45 C.F.R. § 164.524 and applicable State Law. Contractor shall make the PHI available in the format requested by the individual and approved by Company, unless the PHI is not readily producible requested in such format, in which case the PHI shall be produced in hard copy format. Contractor may not charge the individual any fees for such access to PHI.] Company shall reimburse Contractor a portion of the fee charged by Company to the individual that is proportional to the amount of PHI produced by Contractor in relation to the amount of PHI produced by Company, less Company administrative expenses.

5. Access to Contractor's Books and Records. Contractor shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of company available to the Secretary of the Department of Health and Human Services for purposes of determining Company's compliance with the HIPAA laws and regulations. [Upon reasonable notice to Contractor and during Contractor's normal business hours, Contractor shall make such internal practices, books and records available to Company to inspect for purposes of determining compliance with this Agreement.]

6. Amendment of PHI. As directed and in accordance with the time frames specified by Company, Contractor shall incorporate all amendments or addenda to PHI received from Company. Within five (5) business days following Contractor's amendment of PHI as directed by Company, Contractor shall provide written notice to Company confirming that Contractor has made the amendments or addenda to PHI as directed by Company and containing any other information as may be necessary for Company to provide adequate notice to the individual in accordance with 45 C.F.R. § 164.526 and applicable State law.
7. Disclosure Accounting. In the event that Contractor makes any disclosures of PHI that are subject to the accounting requirements of 45 C.F.R. § 164.528, Contractor promptly shall report such disclosures to Company. The notice by Contractor to Company of the disclosure shall include the name of the individual, the recipient, and the reason for disclosure, and the date of the disclosure. Contractor shall maintain a record of each such disclosure, including the date of the disclosure, the name and, if available, the address of the recipient of the PHI, a brief description of the PHI disclosed and a brief description of the purpose of the disclosure. Contractor shall maintain this record for a period of six (6) years and make available to Company upon request in an electronic format so that Company may meet its disclosure account obligations under 45 C.F.R. § 164.528. Contractor understands that this HHS Secretary is mandated to adopt rules expanding the disclosure accounting obligations applicable to Covered Entities that maintain EHR's and agrees that Contractor will be bound by those rules when they are issued and become effective.
8. Security Safeguards. Contractor shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise authorized use or disclosure of PHI, and the integrity and availability of electronic PHI (ePHI) it creates, receives, maintains or transmits on behalf of Company. The security program shall include all the reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, and other requirements of the HIPAA Security Rule. In addition, Contractor agrees to (1) maintain written documentation of its policies and procedures, and of any action, activity or assessment which the HIPAA Security Rule requires to be documented, (2) retain this documentation for six (6) years from the date of its creation or the date when it last was in effect, whichever is later, (3) make this documentation available to those persons responsible for implementing the procedures to which the documentation pertains, and (4) review this documentation periodically, and update it as needed in response to environmental or operational changes affection the security of the electronic protected health information.

[To the extent feasible, Contractor agrees to encrypt all ePHI and destroy all paper PHI such that it is unusable, unreadable or indecipherable to unauthorized users.]

Upon request, Contractor shall make available Contractor's documented security program, including the most recent ePHI risk analysis, policies, procedures, security incidents and responses and evidence of training.

9. Reporting and Mitigating Unauthorized Uses and Disclosures of PHI. Immediately upon discovery by Contractor, Contractor shall report to Company any uses or disclosures of PHI not authorized by this Agreement and, with respects to ePHI, any security incident, including any attempt or successful unauthorized access, use, disclosure, modification, or destruction of ePHI or interference with information system operations.

Contractor further agrees that, following the discovery of a breach of unsecured PHI (as the term unsecured PHI is defined by the Breach Notification Rule or other applicable rules), Contractor will notify the Company of such a breach without reasonable delay and in no case later than five (5) calendar days after discovery of a breach. This notice will include, to the extent possible, the identity of the affected individual, and any other available information that the Company is required by 45 C.F.R. § 164.404(c) to include in its notification to individuals. To the extent this information is not available when Contractor notifies Company of the breach, Contractor will provide it promptly thereafter as information becomes available.

Contractor understands and agrees that a breach of unsecured PHI will be treated as "discovered" as of the first day on which Contractor knew of the breach, or by exercising reasonable diligence, would have known of the breach. The knowledge and reasonable diligence of each of Contractor's employees, officers or other agents shall be imputed to Contractor, other than the knowledge of the employee, officer or agent who committed the breach. [Contractor further understands and agrees that as it is an agent of Company, the date Contractor discovers (or should have discovered) the breach will be imputed to the Company.]

To the extent a law enforcement official tells Contractor that a notification, notice, or posting of a breach of unsecured PHI would impede a criminal investigation or cause damage to national security, Contractor shall: (a) if the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the official; or (b) if the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than thirty (30) days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

Contractor further agrees that at the request of Company, Contractor shall provide notice of the breach of unsecured PHI to individuals as required by the Breach Notification Rule, but that Contractor will not otherwise provide such notice.

Contractor shall use its best efforts to mitigate the deleterious effects of any use or disclosure of PHI not authorized by this Agreement. Further, in the notice provided to Company by Contractor regarding unauthorized uses and/or disclosures of PHI, or security incidents involving ePHI, Contractor shall describe the remedial or other actions undertaken or proposed to be undertaken regarding the unauthorized use or disclosure of PHI, or security incident involving ePHI. Finally, Contractor agrees that

it will maintain adequate documentation of all its security breach investigation and notification efforts, including documentation of the reasons of any delay in notification.

10. Affiliates, Agents, Subsidiaries and Subcontractors. Contractor shall require that any agents, affiliates, subsidiaries or subcontractors, to whom it provides PHI received from, or created or received by Contractor on behalf of Company agrees in writing to the same use, disclosure, and security obligations and restrictions imposed on Contractor by this Agreement.
11. Ownership of Information. All PHI shall be deemed owned by the Company unless otherwise agreed in writing. During the term of this Agreement, Contractor and any authorized subcontractors shall have the right to use the PHI solely for the purposes of this Agreement. The Company grants the Contractor and its agents, the right to de-identify the PHI for analytical purposes.

SAMPLE