

This Business Associate Agreement (“Agreement”) effective on _____ (“Effective Date”) is entered into by and between _____ (the “Business Associate”) and Birch Family Services, Inc., (the “Covered Entity”).

RECITALS

- A. The purpose of this Agreement is to comply with the Standards for Privacy of Individually Identifiable Health Information (“protected health information”) published on August 14, 2002, by the Secretary of the U.S. Department of Health and Human Services (“HHS”) to amend C.F.R. Part 160 and Part 164 (the “Privacy Regulation”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
- B. The parties have a prior agreement dated _____; Appendix “A”, (the “Service Agreement”) under which the Business Associate regularly uses and/or discloses protected health information in its performance of services for the Covered entity.
- C. This agreement sets forth the terms and conditions pursuant to which protected health information that is provided by, or created or received by, the Business Associate from or on behalf of the Covered Entity will be handled.
- D. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

1. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to make internal practices and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner

designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule.

- (g) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- (h) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Section of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

3. Specific Use and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

4. Obligations of Covered Entity

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

5. Permissible Requests by Covered Entity

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

6. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of April 14, 2003 and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. The Covered Entity may immediately terminate this Agreement and the Service Agreement and if it determines that the Business Associate has breached a material provision of this Agreement. Alternatively, the Covered Entity may choose to (i) provide the Business Associate with 30 days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement. If termination is not feasible, the Covered Entity will shall report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Service Agreement.
- (c) Effect of Termination.
- (1) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

- (b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) **Survival.** The respective rights and obligations of Business Associate under Section (c) of this Agreement shall survive the termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (e) **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 the parties hereto any rights, remedies, obligations or liabilities whatsoever.
- (f) **Notices.** Any notices to be given hereunder shall be made via US mail or express courier, or hand delivery to the other party's address given below as follows:

If to Business Associate: _____

If to Covered Entity: _____

Birch Family Services, Inc.
 104 W. 29th Street, 3rd Fl.
 New York, NY 10001

IN WITNESS THEREOF, the parties hereto hereby set their hands and seals as of the

IN PRESENCE OF:

Business Associate

 Witness

By: _____

Name: _____

Title: _____

Covered Entity

 Witness

By: _____

Name: _____

Title: _____