

BUSINESS ASSOCIATES AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (this “*Agreement*”) is entered into by and between Health Outcomes, Inc dba TeleSage for itself (“*Business Associate*”) and _____ (“*Covered Entity*”) as of _____ (the “*Effective Date*”). In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Background and Purpose. The Parties have entered into a Service Agreement dated as of _____ pursuant to which Business Associate performs functions or activities for, or provides services to, Covered Entity that involve use and disclosure of Protected Health Information (as defined below). In connection with the Service Agreement, the Parties wish to execute this Addendum (1) to ensure Covered Entity’s and Business Associate’s compliance with health information privacy and security rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (“*HIPAA*”) and codified at 45 C.F.R. Part 160 and Part 164, subparts A and C (the “*Security Rule*”), subparts A and D (the “*Breach Notification Rule*”), and subparts A and E (the “*Privacy Rule*”), all as applicable and as amended and clarified by guidance issued pursuant thereto, and (2) to ensure that Business Associate protects the privacy and security of Protected Health Information as further provided herein. This Addendum is intended to apply to any existing relationships between Covered Entity and Business Associate involving the exchange of Protected Health Information. The services provided by Business Associate relate to the maintenance, use, and gathering of Protected Health Information relating to the Covered Entity and its clients.

2. Definitions

The following terms used in this Agreement shall have the same meaning as those terms in HIPAA, the Privacy Rule, the Security Rule, and the Breach Notification Rule (the “*HIPAA Rules*”): Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use; provided, however that “*Protected Health Information*” or “*PHI*” shall mean Protected Health Information limited to the information Business Associate received from, or created, maintained, transmitted, or received on behalf of, Covered Entity.

Specific definitions:

(a) **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Health Outcomes, Inc dba TeleSage.

(b) **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” in 45 CFR 160.103, and in reference to the party to this agreement listed above as ‘covered entity’.

3. Obligations and Activities of Business Associate

a. **Obligations of Business Associate.** With regard to its use and disclosure of PHI, Business Associate agrees to:

- i. not use or further disclose PHI other than as permitted or required by this Addendum or as Required by Law.

- ii. report to Covered Entity any use or disclosure of PHI in violation of this Addendum, as well as any incident which, in Business Associate's view, compromises the security of PHI, of which Business Associate becomes aware. Business Associate shall use reasonable efforts to mitigate any deleterious effects from any use, disclosure or incident that Business Associate reports to Covered Entity as provided herein.
- iii. ensure that any agent, including any subcontractor, to whom Business Associate provides PHI agrees to the same restrictions and conditions on the use and disclosure of PHI that apply to Business Associate pursuant to this Addendum.
- iv. make available, in the form, time, and manner reasonably requested by Covered Entity, any and all PHI required for Covered Entity to respond to an Individual's request for access to PHI about them in accordance with 45 C.F.R. 164.524. Business Associate will provide PHI in such electronic format as may be reasonably requested by Covered Entity to the extent that Business Associate maintains such PHI in electronic format.
- v. make available, in the form, time, and manner reasonably requested by Covered Entity, PHI for amendment and incorporate any such amendment as directed by Covered Entity to allow Covered Entity to comply with 45 C.F.R. 164.526.
- vi. document any and all disclosures of PHI by Business Associate or its agents, including subcontractors, as well as any other information related to such disclosures of PHI that would be required for Covered Entity to respond to an Individual's request for an accounting of disclosures in accordance with 45 C.F.R.164.528.
- vii. make available, in the form, time, and manner reasonably requested by Covered Entity, any and all information documented in accordance with Section 3(a)(vi).
- viii. subject to Section 3(a)(ix) and any applicable privileges, and following consultation with Covered Entity, make available to the Secretary of the U.S. Department of Health and Human Services ("HHS") any and all internal practices, books, and records of Business Associate or its agents, including subcontractors, relating to the use and disclosure of PHI, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- ix. to the extent practicable, and to the extent permitted, notify Covered Entity of any and all requests by the Secretary of HHS for information described in Section 3(a)(viii) prior to any release of information thereunder.
- x. comply with the Security Rule.
- xi. determine the Minimum Necessary PHI to be disclosed for uses, disclosures, or requests of or for Covered Entity's PHI, other than those exempt from the Minimum Necessary requirement specified in 45 C.F.R. 164.502(b)(2), in order to accomplish the intended purpose of the use, disclosure, or request, consistent with the terms of the Service Agreement.
- xii. not, directly or indirectly, receive remuneration in exchange for Covered Entity's PHI unless Business Associate or Covered Entity has obtained an authorization from the subject individual(s) which complies with all applicable requirements, or unless an exception applies.

xiii. to the extent Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that would apply to Covered Entity in the performance of such obligations.

b. Permitted Uses and Disclosures of PHI by Business Associate.

Except as otherwise specified in this Addendum, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the Service Agreement. Unless otherwise limited by this Addendum, Business Associate may also: (a) use the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate; (b) disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law or that Business Associate has received prior written approval from Covered Entity to do so, has obtained reasonable assurances from the third party to whom PHI is to be disclosed that the PHI will be held confidentially, and the third party has agreed to notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached; (c) use and disclose PHI to provide Data Aggregation services relating to the Health Care Operations of the Covered Entity as permitted by the Privacy Rule; and (d) use PHI for the conduct of research to improve Business Associate's products and to conduct and publish the results of scholarly research. Business Associate may only use and disclose PHI as described above if such use and disclosure is in compliance with 45 C.F.R. 164.504(e).

c. Obligations of Covered Entity.

Covered Entity agrees to notify Business Associate in writing of any restrictions on uses and disclosures of PHI to which Covered Entity agrees that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this Addendum. Covered Entity agrees to notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this Addendum. Covered Entity agrees to notify Business Associate in writing of changes in its Notice of Privacy Practices that will impact the ability to use and/or disclosure of PHI by Business Associate under this Addendum.

d. Breach of Unsecured Protected Health Information.

Business Associate shall report to Covered Entity a Breach of Unsecured PHI within thirty (30) days of the first day the Breach is known, or reasonably should have been known, to Business Associate, including for this purpose any employee, officer or other agent of Business Associate (other than the individual committing the Breach). The written notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI was, or is reasonably believed to have been, subject to the Breach and the circumstances of the Breach, as both are known to Business Associate at that time. To the extent possible, the description of the circumstances of the Breach shall include: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach; (2) a description of the types of Unsecured PHI that were involved in the Breach; and (3) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches. This notice shall be given in writing to Covered entity pursuant to the notice provisions of the Service Agreement. Following the written notice to Covered Entity, Business Associate shall conduct such further investigation and analysis as is reasonably required, and shall promptly advise Covered Entity of additional information pertinent to the Breach which Business Associate obtains. Business Associate shall cooperate with Covered Entity as may be reasonably necessary for Covered Entity to determine whether the Breach requires notice pursuant to the Breach Notification Rule and, if so required by the Breach Notification Rule, for Covered Entity to provide notice of

the Breach. Covered Entity is responsible for the provision of notice in a timely manner, provided that Covered Entity shall consult with Business Associate as needed regarding the details of the notice.

e. Marketing.

The Parties agree to comply with the restrictions on marketing and fundraising communications contained in the Privacy Rule.

f. Effect of Changes to HIPAA, the Privacy Rule, Security Rule or Breach Notification Rule.

To the extent that any relevant provision of HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule is amended in a manner that materially changes the obligations of Business Associate or Covered Entity that are embodied in the terms of this Addendum, the Parties agree to negotiate in good faith appropriate amendment(s) to this Addendum in order to give effect to such revised obligations. If the Parties cannot agree on an amendment to this Addendum, either Party may terminate this Addendum and the Service Agreement upon thirty (30) days written notice to the other Party or upon such lesser notice as may be required by applicable law.

g. Covered Entity Representative.

Covered Entity will designate above, and will make available to Business Associate throughout the term of this Addendum, an individual who will serve as Covered Entity's primary point of contact for Business Associate in dealing with or addressing any questions, concerns, or issues related to or arising under this Addendum (the "Representative"). Any notices to be provided to Covered Entity by Business Associate pursuant to this Addendum shall be provided to the Representative. Covered Entity may change or replace the Representative at any time by providing written notice to Business Associate of such change or replacement.

h. Physical System Access.

Covered Entity must provide to Business Associate a written listing of those employees, agents, or contractors of Covered Entity who may physically access the records managed or maintained by, or located on the property of, Business Associate that store, contain, or access PHI of Covered Entity (the "Storage Infrastructure"). Any changes to the listing must be provided to Business Associate by Covered Entity. Business Associate retains the right to deny physical access to the Storage Infrastructure to any individual if Covered Entity has not included such individual on the listing to be provided to Business Associate pursuant to this Section 3(h).

4. TERMINATION.

a. The term of this Addendum shall commence on the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the termination provisions in Section 4(b), unless earlier terminated as provided herein. Upon either Party's knowledge of a material breach of the terms of this Addendum by the other Party, the non-breaching Party shall provide the breaching Party written notice of that breach in sufficient detail to enable the breaching Party to understand the specific nature of that breach and afford the breaching Party a reasonable opportunity to cure the breach. If the breaching Party fails to cure the breach within a reasonable time as provided by the non-breaching Party, the non-breaching Party may immediately terminate this Addendum and the Service Agreement.

b. Upon termination of the Service Agreement, Business Associate shall return to Covered Entity or destroy or de-identify any and all PHI in the possession or control of Business Associate and its agents, including

subcontractors, if it is feasible to do so. If return, destruction, or de-identification of PHI is infeasible, Business Associate agrees to, for so long as Business Associate or its agents, including subcontractors, maintain such PHI, extend all protections contained in this Addendum to the use and/or disclosure of any retained PHI by Business Associate or its agents, including subcontractors.

5. MISCELLANEOUS.

a. Interpretation.

The terms of this Addendum shall prevail in the case of any conflict with the terms of any Service Agreement to the extent necessary to allow Covered Entity and Business Associate to comply with HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule. All other terms and conditions of the Service Agreement shall remain in full force and effect. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

b. Survival.

The obligations imposed on Business Associate pursuant to this Addendum with respect to PHI shall survive termination of this Addendum and continue indefinitely solely with respect to PHI that Business Associate or its agents, including subcontractors, retain in accordance with Section 4(b).

c. No Third Party Beneficiaries.

Except as may be specifically set forth in this Addendum, nothing in this Addendum shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

d. Privileges and Protections Not Waived.

Nothing herein shall be construed as waiver of applicable legal or other privileges or protections held or enjoyed by Covered Entity.

e. Amendment.

This Addendum shall not be amended except by the mutual written agreement of the Parties.

f. Governing Law.

To the extent not preempted by applicable federal law, this Addendum shall be governed by and construed in accordance with the laws of the State of North Carolina, notwithstanding its conflicts of law rules.

g. Assignment.

Neither Party may assign any of its rights or obligations under this Addendum without the prior written consent of the other Party.

h. Notice.

Any notices required hereunder shall be given to the Representative in the manner otherwise set forth in the Service Agreement.

i. Counterparts.

This Addendum may be executed in any number of counterparts, each of which shall be deemed an original. In the event any signature is delivered by facsimile or by electronic signature, such signature shall create a valid

and binding obligation on the executing party with the same force and effect as if such facsimile or electronic signature were an original thereof.

j. Regulatory References.

A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

[SIGNATURE PAGE FOLLOWS]

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

**Health Outcomes Inc, dba TeleSage, Inc
(Business Associate)**

Covered Entity:

Name: Benjamin B. Brodey

Name: _____

Title: CEO

Title: _____

Signature  _____

Signature _____

Date: _____

Date: _____

Contact Information for BA Agreement Notices:

Contact Information for BA Agreement Notices:

TeleSage, Inc.
Attn: Benjamin Brodey
PO Box 750
Chapel Hill, NC 27514
Tel: 919.942.8849
Email: bb@telesage.com

Company: _____
Attn: _____
Address: _____

Tel: _____
Email: _____