

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter the “Agreement”) is effective as of this day of ,2014, by and between , with its principal place of business located at (hereinafter the “Covered Entity”), and Six22 LLC, with its principal place of business located at 7068 Kissena Blvd, Flushing, NY 11367(hereinafter “Business Associate”).

1. **Background and Purpose.** Business Associate provides services (hereinafter the “Services”) to Covered Entity. The provision of these Services may require Business Associate to be provided with, have access to, and/or create Protected Health Information (“PHI”) that is subject to federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) and codified at 45 C.F.R. Parts 160 through 164 (the “HIPAA Regulations”). This Agreement shall address Business Associate’s receipt, use, and creation of PHI during the provision of the Services to allow the Covered Entity to comply with HIPAA.

2. **Definitions.** Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided, however, that “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103 and 45 CFR 164.501, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

3. **Obligations with Respect to PHI.** The parties hereto recognize that Covered Entity’s patient information is confidential and both Covered Entity and Business Associate are under an obligation to maintain the confidentiality of such patient information in accordance with federal and state law. Notwithstanding the generality of the foregoing, Business Associate specifically covenants and agrees to comply in all respects with all HIPAA Regulations applicable to Business Associate, in accordance with the requirements set forth in the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009, the Privacy and Security Regulations of HIPAA, as they may be amended from time to time with respect to electronic health care transactions covered under HIPAA. Specifically, and without limitation, Business Associate agrees as follows:

- a. **Use and Disclosure.** Business Associate and its employees and agents shall comply with the terms of this Agreement, as well as all applicable requirements of HIPAA, regarding the use, disclosure, and security of PHI, and agree not to use or disclose PHI other than as permitted or required by this Agreement or required by law [45 C.F.R. § 164.504(e)(2)(ii)(A)]. Business Associate shall ensure that prior to granting access to any PHI, Business Associate’s employees and agents will each enter into an agreement with Business Associate in which they agree to abide by the terms and conditions of this Agreement regarding the use and disclosure of PHI. Business Associate shall not, and shall cause its employees and agents not to, use and disclose PHI in a manner that would violate HIPAA, including 45 C.F.R. Part 164 Subpart E, if such use or disclosure were made by Covered Entity;

- b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement or required by law [45 C.F.R. § 164.504(e)(2)(ii)(B)]. Without limiting the foregoing, Business Associate agrees to protect the integrity and confidentiality of any PHI it exchanges with Covered Entity;
- c. Reporting. Business Associate agrees to report to Covered Entity any use or disclosure of PHI which violates the terms of this Agreement or the requirements of HIPAA or HITECH [as required by 45 C.F.R. 164.410], and/or any security incident of which Business Associate becomes aware of such, including any discovery of any inconsistent use or disclosure by an agent or subcontractor of Business Associate [45 C.F.R. §164.504(e)(2)(ii)(C)];
- d. Agents. Business Associate agrees to ensure that any agents and subcontractors to whom it provides PHI received from, or created, or received by Business Associate on behalf of Covered Entity agree in writing to the same restrictions and conditions set forth in the business associate provisions of the HIPAA Regulations that apply through this Agreement to the Business Associate with respect to such information [45 C.F.R. §164.504(e)(2)(ii)(D)], including without limitation, compliance with both the HIPAA Privacy Rule and the HIPAA Security Rule, and protecting the security of electronic PHI;
- e. Access to Designated Record Sets. To the extent that Business Associate processes or maintains PHI in a Designated Record Set, Business Associate agrees, at the request of Covered Entity for access to PHI about an individual contained in a Designated Record Set, in a time and manner designated by Covered Entity, to make such PHI available to Covered Entity to enable Covered Entity to fulfill its obligations under the HIPAA Regulations respecting the provision of access to PHI [45 C.F.R. § 164.504(e)(2)(ii)(E) and/or 45 CFR 164.524]. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall, within ten (10) days, forward such request to Covered Entity;
- f. Amendments to Designated Record Sets. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set as directed or agreed by Covered Entity, and/or to make available to Covered Entity (or to an individual as directed by Covered Entity) PHI for such amendment, and incorporate any amendments to the PHI in accordance with the HIPAA Regulations [45 C.F.R. § 164.504(e)(2)(ii)(F)];
- g. Accounting of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures of PHI, and to make available to Covered Entity such information as requested [45 C.F.R. § 164.504(e)(2)(ii)(G)]. In the event a request for an accounting is delivered directly

to Business Associate, Business Associate shall, within ten (10) days, forward such request to Covered Entity;

- h. Access to Books and Records. Business Associate agrees to make internal practices, books and records, including policies and procedures, and PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity or the Secretary, as requested by Covered Entity or the Secretary. [45 C.F.R. § 164.504(e)(2)(ii)(H)];
- i. Return of Information. Business Associate agrees upon the completion or earlier termination of the Services, to return to Covered Entity or destroy all PHI, including such information in possession of Business Associate's subcontractors, as a result of the provision of the Services and retain no copies, if it is feasible to do so. If return or destruction is infeasible, Business Associate agrees to notify Covered Entity of this infeasibility and the reason(s) therefore and agrees to extend all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any retained PHI, and to limit further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. This provision shall survive the termination or expiration of this Agreement and the completion or earlier termination of the Services [45 C.F.R. § 164.504(e)(2)(ii)(I)]; and
- j. Mitigation. Business Associate agrees to use reasonable commercial efforts to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI in violation of the requirements of this Agreement.

4. **Permitted Uses and Disclosures of PHI.** Unless otherwise limited herein, Business Associate may:

- a. Use and disclose PHI to perform functions, activities or services for, or on behalf of Covered Entity as specified in any agreement with Covered Entity, provided that such use or disclosure is in compliance with law.
- b. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate [45 C.F.R. §164.504(e)(4)(i)];
- c. 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, if:
 - i. the disclosures are required by law; or
 - ii. Business Associate obtains reasonable assurances in writing from the third party that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party and the third party notifies the Business Associate of any

instances of which it becomes aware in which the confidentiality of the information has been breached [45 C.F.R. § 164.504(e)(4)(ii)].

5. **Security Safeguards.** Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, or transmits to or on behalf of Covered Entity as required by the HIPAA Regulations. Business Associate specifically agrees to employ multiple security mechanisms to ensure the confidentiality, integrity, and availability of the electronic data which is exchanged with Covered Entity, including but not limited to authentication controls, authorization controls, audit controls and encryption, as requested by Covered Entity. Business Associate further agrees to ensure that any agent, including a subcontractor, to whom it provides such information, agrees in writing to implement reasonable and appropriate safeguards to protect it. Business Associate also agrees to promptly report to Covered Entity any security incident of which it becomes aware [45 C.F.R. § 164.314(a)(2)(i)(A)].

6. **Termination and Termination.**

a. **Term.** This Agreement shall be effective as of the date set forth in the first paragraph of this Agreement, 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 information, in accordance with the termination provisions of this Agreement.

b. **Termination by Covered Entity.** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity may immediately or after notice and opportunity for Business Associate to cure the breach or end the violation (if such breach is not cured or violation is not ended within the time specified by Covered Entity): (i) terminate this Agreement, (ii) terminate the provisions of any service or other agreement with Business Associate that involves the use or disclosure of PHI, and (iii) terminate such other provisions, if any, of any service or other agreement with Business Associate as Covered Entity designates in its sole discretion. If termination of the Services is not feasible, Covered Entity shall report the breach or violation to the Secretary of Health and Human Services [45 C.F.R. § 164.504(e)(1)(ii)].

c. **Effect of Termination.**

(i) Except as provided otherwise in this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received on behalf of Covered Entity. This provision shall apply to PHI that is in possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.

(ii) In the event that Business Associate determines that returning or destroying PHI 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 is infeasible, Business Associate shall extend the protections of this Agreement to such

PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains PHI.

7. **Indemnity**. Business Associate shall indemnify and hold Covered Entity harmless from all claims, damages, liabilities, judgments, costs, including reasonable attorneys' fees, which Covered Entity may incur in connection with the performance or breach of Business Associate's responsibilities, obligations, warranties, and representations contained in this Agreement. This provision shall survive the termination or expiration of this Agreement and the completion or earlier termination of the Services.

8. **Amendment**. The parties acknowledge that federal and state laws relating to the privacy and security of patient information are evolving rapidly. The parties hereby agree that references to HIPAA as set forth in this Agreement shall mean HIPAA as amended, without need to amend this Agreement. The parties further agree to take such actions and to execute any and all amendments to this Agreement that Covered Entity determines appropriate to implement the standards and requirements of HIPAA, the HIPAA Regulations and other federal and state laws and regulations relating to the privacy and security of patient information.

9. **No Third Party Beneficiaries**. Nothing express or implied in this Agreement shall confer upon any person, other than the Parties hereto and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **HITECH ACT**

- a. Business Associate will comply with the requirements of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (hereinafter "HITECH") Act, codified at 42 U.S.C. Sections 17921 – 17954, which are applicable to business associates, and will comply with all regulations issued by the Department of Health and Human Services (hereinafter "HHS") to implement these referenced statutes, as of the date by which business associates are required to comply with such referenced statutes and HHS regulations; and
- b. Business Associate will make a report to the Covered Entity of any breach of unsecured protected health information, as required by 42 U.S.C. Section 17932(b), within five business days of Business Associate's discovery of the breach, and
- c. Business Associate will indemnify Covered Entity for any reasonable expenses Covered Entity incurs in notifying individuals of a breach caused by Business Associate or its subcontractors or agents.
- d. Business Associate understands it is not in compliance with the HIPAA standards set forth in Sections 164.502(e) and 164.504(e) if the Business Associate knows of a pattern of activity or practice that the Covered Entity engages in which constitutes a material breach or violation of the Covered Entity's obligation under a contract or other business arrangement, unless the Business Associate takes reasonable steps to cure the breach or end the violation, as applicable, and if in taking steps to cure

or end the breach it is unsuccessful, the Business Associate must terminate the contract or arrangement if feasible, and if not feasible, the Business Associate must report the problem to the Secretary.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in Section 6(a) above.

Six22 LLC

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____