

BUSINESS ASSOCIATE AND CONFIDENTIALITY AGREEMENT

This Business Associate and Confidentiality Agreement (the “BAA”) is made effective the ___ day of _____, 2024, by and between _____, hereinafter referred to as “Covered Entity,” and **Cherry Bekaert Advisory, LLC**, hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, Covered Entity is a creditor with an economic interest in both various opioid litigation and bankruptcy matters (“Litigation Matters”), and has engaged legal counsel to represent its interest therein; and

WHEREAS, Business Associate is an accounting and consulting firm that has been engaged by various attorneys in the Litigation Matters to provide litigation consulting services in connection with these matters, such litigation consulting to include the preparation of damage claims (“Services”); and

WHEREAS, pursuant to the preparation of damage claims, Business Associate must process various financial data from Covered Entity that may include, Protected Health Information (“PHI”) and/or Electronic Protected Health Information (“ePHI”) as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (Public Law 104-191) enacted on August 21, 1996, as has been amended thereto (“Data Aggregation”); and

WHEREAS, Business Associate has agreed to provide its Services on behalf of Covered Entity; and

WHEREAS, the Parties now wish to enter into this BAA to ensure compliance with the Privacy and Security Rules of The Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”) (45 C.F.R. Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations).

THEREFORE, in consideration of the Parties’ new or continuing obligations, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this BAA.

Except as otherwise defined herein, any and all capitalized terms in this BAA shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this BAA and mandatory provisions of the HIPAA Privacy and Security Rules, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this BAA are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this BAA shall control.

I. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. Business Associate may use or disclose PHI to perform the Services hereunder and any other functions, activities, or services for, or on behalf of, Covered Entity as described in this BAA or as

otherwise requested by the Covered Entity, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.

b. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

c. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

1. the disclosures are required by law; or

2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed as described under this BAA or as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate agrees not to use or further disclose PHI other than as permitted or required by this BAA or as required by law.

b. Business Associate agrees to use appropriate safeguards, and to comply, where applicable, with 45 C.F.R. Part 164, Subpart C with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this BAA. Specifically, Business Associate will:

1. implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 C.F.R. §§ 164.308, 164.310, and 164.312; and

2. report to Covered Entity any Security Incident that does not rise to the level of a Breach of Unsecured Protected Health Information (“Breach”), and any use or disclosure of PHI that is not provided for by this BAA but that does not rise to the level of a Breach, of which Business Associate becomes aware. The report shall be made as soon as practical, and in any event within twenty (20) days of Business Associate’s discovery of the Security Incident or the impermissible use or disclosure.

c. Business Associate shall, during the term of this BAA, at its sole cost and expense obtain and maintain insurance coverage against improper access, uses, and disclosures of Covered Entity’s data and PHI by Business Associate, in at least the minimum amount deemed appropriate by Business Associate’s insurance carrier based on the Services to be provided under this BAA. Business Associate shall provide a certificate as evidence of such insurance coverage upon written request of Covered Entity.

d. Business Associate shall require each subcontractor that creates, receives, maintains, or transmits PHI on its behalf to enter into a business associate agreement containing the same restrictions on access, use, and disclosure of PHI as those applicable to Business Associate under this BAA. Furthermore,

to the extent that Business Associate provides ePHI to a subcontractor, Business Associate shall require such subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C.

e. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 of which Business Associate has been notified by Covered Entity.

f. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual's request for access to his or her PHI in accordance with 45 C.F.R. § 164.524. If Business Associate maintains PHI in an electronic designated record set, it agrees to make such PHI available electronically to Covered Entity or, upon Covered Entity's specific request, to the individual requesting it.

g. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of 45 C.F.R. § 164.526.

h. Business Associate agrees to document any disclosures of PHI, and to make PHI available for purposes of accounting of disclosures, as required by 45 C.F.R. § 164.528.

i. If Business Associate is to carry out one or more of Covered Entity's obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

j. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, to enable the Secretary to determine Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules. Business Associate also shall cooperate with the Secretary and, upon the Secretary's request, pursuant to 45 C.F.R. § 160.310, shall disclose PHI to the Secretary to enable the Secretary to investigate and review Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules.

k. Unless authorized in this BAA, Business Associate shall not:

1. use PHI for marketing or fundraising;
2. use PHI to create a limited data set or to de-identify the information;
3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity other than the data aggregation services being provided in connection with the Services being performed by Business Associate under this Agreement; or
4. use or disclose PHI in exchange for remuneration of any kind, whether directly or indirectly, financial or non-financial, other than such remuneration as Business Associate receives

from Covered Entity in exchange for Business Associate's provision of the Services specified in this BAA.

III. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

a. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.

b. Following the discovery of a Breach, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than five (5) calendar days after discovery of the Breach, and shall assist in Covered Entity's Breach analysis process, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. The Breach notification shall be provided to Covered Entity in the manner specified in 45 C.F.R. § 164.410(c) and shall include the information set forth therein to the extent known. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered Entity shall determine whether Business Associate or Covered Entity will be responsible for providing notification of any Breach to affected individuals, the media, the Secretary, and/or any other parties required to be notified under the HIPAA Privacy and Security Rules or other applicable law. If Covered Entity determines that Business Associate will be responsible for providing such notification, Business Associate may not carry out notification until Covered Entity approves the proposed notices in writing.

c. Business Associate shall bear all of Covered Entity's costs of any Breach and resultant notifications, if applicable, when the Breach arises from Business Associate's willful misconduct, violation of law, or violation of this BAA.

IV. OBLIGATIONS OF COVERED ENTITY

a. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes or revocation could reasonably be expected to affect Business Associate's permitted or required uses and disclosures.

c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such PHI.

V. TERM AND TERMINATION

a. **Term.** This BAA shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section V.c. below, 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 returned to Covered Entity or destroyed (and a certificate of destruction is provided) or, if such return or destruction is infeasible, or by order of Court, when protections are extended to such information;

b. Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this BAA, the non-breaching Party shall, notify the breaching Party, and the breaching Party shall have thirty (30) calendar days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this BAA without penalty.

Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice is not required and the non-breaching Party shall terminate this BAA without penalty.

c. Effect of Termination.

1. Except as provided in paragraph 2 of this subsection c., upon termination of this BAA or upon request of Covered Entity, whichever occurs first, Business Associate shall within ten (10) days return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Neither Business Associate nor its subcontractors shall retain copies of the PHI except as required by law.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, as reasonably supported by competent records and other written evidence of Business Associate, Business Associate will extend the protections of this Agreement to the information retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

VI. MISCELLANEOUS

a. No Rights in Third Parties. Except as expressly stated herein or in the HIPAA Privacy and Security Rules, the Parties to this BAA do not intend to create any rights in any third parties.

b. Survival. The obligations of Business Associate under Section V.c. above shall survive the expiration, termination, or cancellation of this BAA, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

c. Amendment. The Parties agree that this BAA will only be modified or be amended to conform to any changes in the HIPAA Privacy and Security Rules and the Health Insurance Portability and Accountability ACT as are necessary for each party to comply with the current requirements of such. In those instances where an amendment to this BAA is required by law, the Parties shall negotiate in good faith to amend the terms of this BAA within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this BAA and any underlying agreements as may exist between the Parties upon ten (10) days written notice to the other Party. Except as provided above, this BAA may be amended or modified only in a writing signed by the Parties. This BAA shall not otherwise be modified or amended at the request of Covered Entity.

d. Assignment. Neither Party may assign its respective rights and obligations under this BAA without the prior written consent of the other Party.

e. Independent Contractor. None of the provisions of this BAA are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this BAA and any other agreements between the Parties evidencing their business relationship. Nothing in this BAA creates or is intended to create an agency relationship.

f. Governing Law. To the extent this BAA is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the state of Delaware.

g. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

h. Interpretation. Any ambiguity of this BAA shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Privacy and Security Rules.

i. Severability. In the event that any provision of this BAA is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this BAA will remain in full force and effect.

j. Notice. Any notification required in this BAA shall be made in writing to the representative of the other Party who signed this BAA or the person currently serving in that representative's position with the other Party.

k. Certain Provisions Not Effective in Certain Circumstances. The provisions of this BAA relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive, create, maintain, or transmit any ePHI from or on behalf of Covered Entity.

l. Entire Agreement. This BAA constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this BAA and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties' obligations with respect thereto, the terms of this BAA shall control.

m. Counterparts. This BAA may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same BAA.

IN WITNESS WHEREOF, the Parties have executed this BAA as of the day and year written above. Your typed signature and submission of this BAA will have the same force and effect as if you signed the BAA on paper, which you may do alternatively.

Covered Entity:

Business Associate:

Cherry Bekaert Advisory, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____