

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) dated July 22, 2014 (the “Effective Date”), is entered into by and between the Georgia Department of Administrative Services (DOAS), on behalf of the departments, institutions and agencies of Georgia for which DOAS provides surplus property disposal and that maintain protected health information, (collectively referred to as “Covered Entity”) and Diversified Asset Recovery, LLC (“Business Associate”), for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”) and the privacy and security provisions of the American Recovery and Reinvestment Act of 2009 and its implementing regulations (“ARRA”). Covered Entity and Business Associate may be individually referred to as “Party,” and collectively referred to as the “Parties.”

**WHEREAS**, DOAS is charged with the duty and responsibility to dispose of surplus property for each department, institution and agency of the State of Georgia; and

**WHEREAS**, in order to fulfill this duty, DOAS and Business Associate have entered into a contract for disposal of electronics (Contract Number 40300-233-DAS0000093) (the “Business Arrangement”); and

**WHEREAS**, pursuant to this Business Arrangement, Business Associate may provide disposal services for Covered Entity that require Business Associate to access, receive, maintain, use or transmit health information that is protected by state and/or federal law; and

**WHEREAS**, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (including, but not limited to, parties meeting the definition of “covered entity” or “business associate”) to protect the privacy of certain individually identifiable health information (“Protected Health Information”, or “PHI”); and

**WHEREAS**, pursuant to HIPAA, HHS has issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“E PHI”); and

**WHEREAS**, in order to protect the privacy and security of PHI, including E PHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or E PHI; and

**WHEREAS**, Business Associate and Covered Entity desire to enter into this Business Associate Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement and the Business Arrangement, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

**1. Business Associate Obligations.**

1.1 Business Associate may receive from Covered Entity, or create, receive, maintain or transmit on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in HIPAA or ARRA, as applicable, and all references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or Security Standards (as of the compliance deadline for such standards) if the PHI were used or disclosed by Covered Entity in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

1.2 Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA and ARRA, conducting a security risk assessment, and training Business Associate employees who will have access to PHI with respect to the policies and procedures required by HIPAA and ARRA.

1.3 In the event of a Breach (as hereinafter defined) of any Unsecured PHI or EPHI that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity in connection with the Business Arrangement, Business Associate shall provide notice of such Breach to Covered Entity within ten (10) calendar days. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. "Unsecured PHI or EPHI" shall mean PHI or EPHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

1.4 Notice of a Breach to Covered Entity shall include the identification of each individual whose PHI or EPHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach. At the request of Covered Entity, Business Associate shall identify: the date of the Breach, the date the Breach was discovered by the Business Associate, or, by the exercise of reasonable diligence should have been known, the scope of the Breach, the Business Associate's response to the Breach, the identification of the party responsible for causing the Breach, if known, and any other available information that the Covered Entity is required to include in any notification to the individual(s) affected.

1.5 In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach that is known to

Business Associate.

2. **Use of PHI.** Except as otherwise permitted herein or required by law, Business Associate shall use PHI only for the following purposes: (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by Business Associate is not permitted unless expressly authorized in writing by Covered Entity.

3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided either that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidentially and further used and disclosed only as required by law or for the purposes for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards; and (c) ensures that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. Business Associate may disclose PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients") and may allow Recipients to create or receive PHI on its behalf only if Recipients agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement, including, but not limited to, the requirement that the Recipients will: (i) comply with all requirements of the Privacy and Security Standards that apply to the Business Associate, (ii) appropriately safeguard all PHI that is either created or received, and (iii) comply with the Breach notification and mitigation requirements under this Agreement. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) calendar days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time, and (ii) amend PHI

maintained by Business Associate as directed or agreed to by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) calendar days of such request and shall make any amendment requested by Covered Entity within ten (10) calendar days of such request. The information shall be provided (i) in the form and format requested, if it is readily producible in such form and format; or, if not, in a readable form and format as agreed to by the Covered Entity and the individual, or (ii) in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost based fee for copying PHI may be charged. Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 C.F.R. §164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Covered Entity's request. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

7. **Records and Audit.** Business Associate shall make available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's or Business Associate's compliance with the Privacy Standards and Security Standards, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business

Associate of any and all requests by or on behalf of any and all government authorities served upon Business Associate for PHI.

**8. Confidentiality.**

8.1 Business Associate shall take any steps reasonably required to (i) protect PHI from unauthorized uses or disclosures, and (ii) maintain the confidentiality and integrity of PHI.

8.2 The Parties shall comply with all applicable federal and state laws governing the confidentiality and privacy of health information, respectively, including, without limitation, HIPAA and the regulations promulgated thereunder, and ARRA and the regulations promulgated thereunder.

**9. Term and Termination.**

9.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 9, provided, however, that any termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

9.2 Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

9.3 Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing: (i) Business Associate shall fail to observe or perform any material covenant or obligation contained in this Agreement for ten (10) calendar days after written notice thereof has been given to Business Associate by Covered Entity; or (ii) A violation by Business Associate of any provision of HIPAA or ARRA or applicable laws or regulations relating to the obligations of Business Associate under this Agreement.

9.4 Termination of this Agreement for either of the two reasons set forth in Subsection 9.3 above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.

9.5 Upon the termination of all Business Arrangement, either Party may terminate this Agreement by providing written notice to the other Party.

9.6 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall retain only that PHI which is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities, and will 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 such PHI. Business Associate further agrees to comply with other

applicable state or federal laws, which may require a specific period of retention, redaction, or other treatment of such PHI.

**10. No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN “AS IS” BASIS. FACILITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**11. Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) (“the Federal Healthcare Programs”); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

**12. Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity for and from all claims, demands, lawsuits, losses, damages, liabilities, penalties, fines, or expenses, including reasonable attorneys' fees, asserted by persons or entities against Covered Entity, or incurred by Covered Entity as a result thereof, relating to PHI maintained, used, or disclosed by Business Associate, or by its agents or subcontractors, or arising in any way from Business Associate's, or its agents' or subcontractors', obligations or performance under this Agreement or violations of applicable Federal or state laws, rules or regulations.

**13. Insurance.** Business Associate shall obtain and maintain during the term of this Agreement liability insurance in an amount of not less than \$1,000,000.00 per claim covering claims based on a violation of any applicable Federal or state laws or regulations concerning the privacy of patient information. Such coverage shall be on an occurrence basis and name the Covered Entity as an additional insured. Upon written request, the Business Associate shall provide the Covered Entity a copy of such policy or a certificate from the insurer evidencing such coverage.

#### **14. Miscellaneous.**

**14.1 Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither Party shall refuse delivery of any notice hereunder.

If to Covered Entity:

Department of Administrative Services  
200 Piedmont Avenue, S.E.  
Suite 1804, West Tower  
Atlanta, Georgia 30334  
Attention: Director, Surplus Property

If to Business Associate:  
Diversified Asset Recovery, LLC  
2700 Hazelhurst Avenue  
Orlando, FL 32804  
Attention: President, Sales & Business Development

**14.2 Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

**14.3 Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

**14.4 Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**14.5 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 and Business Associate to comply with the requirements of HIPAA and ARRA, including the Privacy Rule, the Security Rule, and the HITECH Act. If any applicable law and/or the regulations promulgated under HIPAA or ARRA are amended, or interpreted by governmental authorities, in a manner that renders this Agreement inconsistent therewith, the Parties shall amend this Agreement to the extent necessary to comply with such amendments or interpretations. Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations. Except as provided in this Section 14.5., no amendment to this Agreement shall be effective unless it is in writing and signed on behalf of Covered Entity and Business Associate.

**14.6 Entire Agreement.** This Agreement constitutes the complete agreement between

Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement are more strict with respect to PHI and comply with the Privacy Standards and/or Security Standards, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

**14.7 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which Covered Entity is located, excluding its conflicts of laws provisions. Jurisdiction and Venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Covered Entity is located.

**14.8 Equitable Relief.** Business Associate understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

**14.9 Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. Business Associate is an independent contractor, not an agent, to Covered Entity and nothing contained herein shall be intended to expand the scope or nature of the relationship. This Agreement does not express or imply any commitment to purchase or sell goods or services.

**14.10 Counterparts.** This Agreement 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 document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the Effective Date.

**(SIGNATURES ON FOLLOWING PAGE)**

**COVERED ENTITY:**

**GEORGIA DEPARTMENT OF  
ADMINISTRATIVE SERVICES**

By: 

Steven Ekin  
Director, Surplus Division

Date: July 22, 2014

**BUSINESS ASSOCIATE:**

**DIVERSIFIED ASSET RECOVERY  
LLC**

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

(Print or Type Name)

*President of Sales & Business Development*

(Title)

Date: 7-22-14