

## BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into by and between HENNEPIN HEALTHCARE SYSTEM, INC., a public subsidiary corporation of Hennepin County, doing business as HENNEPIN COUNTY MEDICAL CENTER (“Covered Entity”) and CONTRACTOR (“Business Associate”).

1. **Applicability; Conflicts.** This Agreement applies with respect to all contracts or other arrangements between Business Associate and Covered Entity (“Underlying Agreement”) that involve the acquisition, access, use or disclosure of Protected Health Information (“PHI”) in connection with the provision of the services described in the Underlying Agreement. This Agreement addresses the business associate requirements of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act adopted as part of the American Recovery and Reinvestment Act of 2009 and their implementing regulations, as they may be modified or amended from time to time (collectively, “HIPAA”). Business Associate and Covered Entity intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in compliance with HIPAA, which laws are incorporated herein by reference in their entirety. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA. Capitalized terms used, but not otherwise defined, in this Agreement shall have the meaning set forth in the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164 (“HIPAA Rules”).

2. **Obligations And Activities of Business Associate.** Business Associate agrees that it shall comply with all the obligations of a Business Associate as required by HIPAA, which specifically include, without limitation, the following:

2.1 Business Associate shall not acquire, access, Use or Disclose PHI other than as permitted or required by the Underlying Agreement or this Agreement or as Required By Law.

2.2 Business Associate shall use appropriate safeguards, consistent with the HIPAA

Rules, to prevent acquisition, access, Use or Disclosure of PHI other than as provided for by the Underlying Agreement or this Agreement or as Required By Law. Moreover, Business Associate shall implement administrative, physical and technical safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to preserve the integrity and confidentiality of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

2.3 Business Associate shall promptly report to Covered Entity’s Information Security and Privacy Officer any acquisition, access, Use or Disclosure of PHI in violation of the HIPAA Rules or not provided for by the Underlying Agreement or this Agreement, including any Breaches of Unsecured PHI as required by 45 C. F.R. 164.410, and any Security Incident of which it becomes aware.

2.4 Business Associate shall provide written notice to Covered Entity of any acquisition, access, Use or Disclosure of PHI described in Section 2.3 (“Breach”) as soon as possible, but in no later than ten (10) business days, following discovery of any Breach. The written notice shall include the following: (a) the identification of each Individual who was or may have been impacted by such Breach, (b) a description of the circumstances of the Breach, (c) a description of the types of Unsecured PHI involved in the Breach; and (d) a description of what the Business Associate has done or is doing to investigate the Breach, mitigate harm to the Individual impacted by the Breach, and protect against future Breaches. Business Associate shall cooperate in good faith with Covered Entity in the investigation of any Breach. Covered Entity reserves the right to make further inquiries or request further action related to the Breach. All decisions regarding notification required by the HIPAA Rules related to the Breach shall be made by the Covered Entity. Business Associate agrees to assist the Covered Entity with notification steps as directed by the Covered Entity.

2.5 Business Associate shall promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of the acquisition, access, Use or Disclosure of PHI by

Business Associate, Subcontractors or third parties in violation of the requirements of the HIPAA Rules or the provisions of the Underlying Agreement or this Agreement.

2.6 Business Associate shall ensure that any agent, including a Subcontractor, that creates, receives, maintains, or transmits PHI received from Covered Entity, or created by Business Associate on behalf of Covered Entity, agrees in a written document to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information. Business Associate shall ensure that any agent, including a Subcontractor, to whom it provides PHI agrees to implement reasonable and appropriate safeguards to protect such information which shall be no less than those required of Business Associate in Section 2.2 above. The Business Associate is not in compliance with the HIPAA Rules if it knew of a pattern of activity or practice of a Subcontractor that constitutes a material Breach or violation of the Subcontractor's compliance with the HIPAA Rules, unless the Business Associate took reasonable steps to cure the Breach or end the violation, and if such steps were unsuccessful terminated the subcontract or arrangement, if feasible.

2.7 Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 C.F.R. § 164.524 (Access of Individuals to PHI).

2.8 Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 (Amendment of PHI) at the request of Covered Entity, and in a reasonable time and manner designated by Covered Entity. In the event that Business Associate receives a request directly from an Individual for a copy of his/her PHI or to amend his/her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days after receipt of such request and shall coordinate any disclosure or amendments with Covered Entity.

2.9 Business Associate shall 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, and at the request of Covered Entity, to Covered Entity, in a time and manner designated by the Secretary or Covered Entity, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules. Additionally, Business Associate shall immediately advise Covered Entity of any inspection request made by regulators of the Business Associate concerning any PHI obtained from or generated on behalf of Covered Entity.

2.10 Business Associate shall document all Disclosures of PHI 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 PHI in accordance with 45 C.F.R. § 164.528 (Accounting of Disclosures of PHI). Business Associate shall provide to Covered Entity, in a reasonable time and manner designated by Covered Entity, information collected in accordance with the Underlying Agreement or this Agreement to permit Covered Entity to respond to such a request by an Individual.

2.11 Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other conditions, restrictions, and requirements of the HIPAA Rules, including the requirements of 45 C.F.R. § 164.316 and shall make such policies and procedures available to the Secretary and Covered Entity upon request.

### **3. Permitted Uses And Disclosures by Business Associate.**

3.1 Except as otherwise limited in the Underlying Agreement or this Agreement, Business Associate may acquire, access, Use or Disclose PHI to perform services for, or on behalf of Covered Entity, as specified in the Underlying Agreement, provided that such acquisition, access, Use or Disclosure would not violate the HIPAA Rules if done by Covered Entity.

3.2 Business Associate shall request, Use and Disclose the minimum amount of PHI necessary to perform the services under the Underlying Agreement.

3.3 Except as otherwise limited in this Agreement or the Underlying Agreement between

Business Associate or Covered Entity, Business Associate may:

(a) Use PHI, if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;

(b) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that such disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that such information will remain confidential and will be Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person is required by the Business Associate to notify the Business Associate of any instances of which the person is aware in which the confidentiality or security of the information has been breached.

3.4 Business Associate shall not create De-identified PHI from the PHI of Covered Entity unless expressly authorized by Covered Entity in writing in the Underlying Agreement. If Business Associate is authorized to create De-identified PHI, Business Associate shall do so in accordance with the HIPAA Rules and relevant Secretary guidance.

#### **4. Obligations of Covered Entity.**

4.1 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes affect Business Associate's permitted or required Uses and Disclosures.

4.2 Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, if such restriction affects Business Associate's permitted or required Uses or Disclosures.

4.3 Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

#### **5. Term And Termination.**

5.1 This Agreement shall be effective as of the date of execution 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 in this Section 5.

5.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate the Underlying Agreement and this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity. If Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate the Underlying Agreement and this Agreement. This provision shall be in addition to and shall not limit any rights of termination set forth in the Underlying Agreement.

5.3 (a) Except as provided in 5.3(b), upon termination of this Agreement or the Underlying Agreement, for any reason, Business Associate shall 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 or agents of Business Associate. Business Associate, its Subcontractors or other third parties, shall retain no copies of the PHI in any form. Business Associate shall certify in writing that it has complied with the requirements of this Section 5.

(b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall notify Covered Entity of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI 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 such PHI.

#### **6. Miscellaneous.**

6.1 The respective rights and obligations of Business Associate under this Agreement shall survive the termination, expiration, or other conclusion of the Underlying Agreement or this Agreement.

6.2 This Agreement shall inure to the benefit of the parties hereto and each Covered Entity affiliate to or on behalf of which Business Associate provides services, but not to the benefit of any other third party.

6.3 This Agreement shall be deemed automatically amended to the extent necessary to comply with changes in law.

6.4 A waiver of any term or provision shall not be construed as a waiver of any other term or provision. Nothing in this Agreement shall be deemed a waiver of any legally-recognized claim of privilege available to either party.

6.5 Business Associate will indemnify, defend and hold harmless Covered Entity and its

employees from and against any and all claims, penalties, legal actions, liabilities, damages, settlement or costs (including reasonable attorneys' fees) that may arise from the negligence or willful misconduct of the Business Associate or its employees or Subcontractors in the performance of this Business Associate Agreement or from Business Associate's failure to perform its obligations under this Agreement.

6.6 Business Associate understands that it is directly subject to all regulatory rules and related penalties set forth in the HIPAA Rules.

6.7 Business Associate is an independent contractor of Covered Entity and is not an agent of Covered Entity. Covered Entity shall not provide Business Associate with interim instruction regarding the Business Associate's compliance with the terms of this Agreement.