

**Waukesha County
HIPAA/HI-TECH AGREEMENT**

Under the terms of Contract Number _____, CONTRACTOR agrees to comply with the terms and conditions of this agreement.

1. Definitions:

- a. *Protected Health Information* (PHI) means any information, whether oral or recorded in any form or medium, including information transmitted by electronic media or maintained in electronic media (ePHI) that: (i) relates to the past, present or future physical or mental condition of any Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and (ii) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.
- b. *Individual* means the person who is the subject of PHI, and shall include a person who qualifies under the Privacy Rule as a personal representative of the Individual.
- c. *Capitalized terms* used in this Agreement, but not otherwise defined, shall have the same meaning as those terms in the Privacy Rule.
- d. Breach means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI. For purposes of this definition, "compromises the security or privacy of the PHI" means poses a significant risk of financial, reputational, or other harm to the individual. A use or disclosure of PHI that does not include the identifiers listed a §164.514(e)(2), limited data set, date of birth, and zip code does not compromise the security or privacy of the PHI.

Breach excludes:

- A. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a Covered Entity (CE) or Business Associate (BA) if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- B. Any inadvertent disclosure by a person who is authorized to access PHI at a CE or BA to another person authorized to access PHI at the same CE or BA, or organized health care arrangement in which the CE participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- C. A disclosure of PHI where a CE or BA has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2. Prohibition on Unauthorized Use or Disclosure of PHI: CONTRACTOR shall not use or disclose any PHI or ePHI received from or on behalf of Waukesha County except as permitted or required by the CONTRACT, as required by law, or as otherwise authorized in writing by Waukesha County.
3. Use and Disclosure of Protected Health Information: Except as described in Section 4, CONTRACTOR may access, transmit, maintain, retain, modify, record, store, destroy or disclose PHI or ePHI only if a written request is submitted to Waukesha County delineating the reasons and upon their approval of the written request.

4. Use of PHI for Certain of CONTRACTOR's Operations: CONTRACTOR may use and/or disclose PHI or ePHI it creates for, or receives from, Waukesha County to the extent necessary for CONTRACTOR's proper management and administration, or to carry out CONTRACTOR's legal responsibilities, only if:
 - a. The disclosure is required by law; or
 - b. CONTRACTOR obtains reasonable assurances, evidenced by written contract, from any person or organization to which CONTRACTOR shall disclose such PHI or ePHI that such person or organization shall:
 - i. hold such PHI OR ePHI in confidence and use or further disclose it only for the purpose for which CONTRACTOR disclosed it to the person or organization, or as required by law; and
 - ii. notify CONTRACTOR, who shall in turn promptly notify Waukesha County, of any instance which the person or organization becomes aware of in which the confidentiality of such PHI or ePHI was breached.
5. Safeguarding of PHI or ePHI: CONTRACTOR shall develop, implement, maintain, and use reasonable and appropriate administrative, technical, and physical safeguards to protect the confidentiality, integrity and availability of all PHI or ePHI, in any form or media, created, received, maintained or transmitted on behalf of Waukesha County. CONTRACTOR shall document and keep these security measures current. CONTRACTOR shall cooperate in good faith in response to any reasonable requests from Waukesha County to discuss, review, inspect, and/or audit Business Associate's safeguards.
6. Subcontractors and Agents: If CONTRACTOR provides any PHI or ePHI which was received from, or created for, Waukesha County to a subcontractor or agent; CONTRACTOR shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on CONTRACTOR by this CONTRACT.
7. Maintenance of the Security of Electronic Information: CONTRACTOR shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Health Information received from, or on behalf of, Waukesha County which pertains to an Individual. CONTRACTOR shall document and keep these security measures current and available for inspection, upon request. CONTRACTOR's security measures must be consistent with HIPAA's Security regulations, Title 45, Part 142 of the Code of Federal Regulations ("Security Rule"), once these regulations are effective.
8. Compliance with Electronic Transactions and Code Set Standards: If CONTRACTOR conducts any Standard Transaction for, or on behalf, of Waukesha County, CONTRACTOR shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulation. CONTRACTOR shall not enter into, or permit its subcontractors or agents to enter into, any Agreement in connection with the conduct of Standard Transactions for or on behalf of Waukesha County that:
 - a. changes the definition, Health Information condition, or use of a Health Information element or segment in a Standard;
 - b. adds any Health Information elements or segments to the maximum defined Health Information Set;

- c. uses any code or Health Information elements that are either marked "not used" in the Standard's Implementation Specification(s) or are not in the Standard's Implementation Specifications(s); or
 - d. changes the meaning or intent of the Standard's Implementations Specification(s).
9. Access to PHI or ePHI: At the direction of Waukesha County, CONTRACTOR agrees to provide access to any PHI or ePHI held by CONTRACTOR which Waukesha County has determined to be part of Waukesha County's Designated Record Set, in the time and manner designated by Waukesha County. This access will be provided to Waukesha County or, as directed by Waukesha County, to an Individual, in order to meet the requirements under the Privacy Rule.
10. Amendment or Correction to PHI or ePHI: At the direction of Waukesha County, CONTRACTOR agrees to amend or correct PHI or ePHI held by CONTRACTOR and which Waukesha County has determined to be part of Waukesha County's Designated Record Set, in the time and manner designated by Waukesha County.
11. Reporting of an Incident/Breach, Unauthorized Disclosures or Misuse of PHI or ePHI: CONTRACTOR shall report to Waukesha County any use, disclosure or discovery of breach (occurrence) of PHI or ePHI not authorized by this CONTRACT or in writing by Waukesha County. An occurrence shall be treated as "discovered" as of the first day on which such occurrence is known to the CONTRACTOR, or by exercising reasonable diligence, should have been known to CONTRACTOR.
- a. CONTRACTOR shall make the report to Waukesha County's Privacy Official not less than one (1) business day after CONTRACTOR learns of such use or disclosure. CONTRACTOR's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the PHI OR ePHI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what CONTRACTOR has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action CONTRACTOR has taken or shall take to prevent future similar unauthorized use or disclosure. CONTRACTOR shall provide such other information, including a written report, as reasonably requested by Waukesha County's Privacy Official.
 - b. At the Covered Entity's option, the CONTRACTOR will be responsible for notifying individuals of the occurrence when Waukesha County requires notification and to pay any cost of such notifications, as well as any costs associated with the breach, including but not limited to credit monitoring. The CONTRACTOR must obtain the Waukesha County's approval of the time, manner and content of any such notifications, provide Waukesha County with copies of the notifications, and provide the notifications within sixty (60) days after discovery of the breach. The CONTRACTOR shall have the burden of demonstrating to Waukesha County that all notifications were made as required, including any evidence demonstrating the necessity of any delay beyond the 60-day calendar notification requirement to affected individuals after the discovery of the breach by the Waukesha County or CONTRACTOR.
12. Mitigating Effect of Unauthorized Disclosures or Misuse of PHI or ePHI: CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a misuse or unauthorized disclosure of PHI or ePHI by CONTRACTOR in violation of the requirements of this CONTRACT. The CONTRACTOR shall reasonably cooperate with Waukesha County's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

13. Tracking and Accounting of Disclosures: So that Waukesha County may meet its accounting obligations under the Privacy Rule:

- a. *Disclosure Tracking.* Starting April 14, 2003, for each disclosure not excepted under subsection (b) below, CONTRACTOR will record for each disclosure of PHI or ePHI it makes to Waukesha County or a third party of PHI or ePHI that CONTRACTOR creates or receives for or from Waukesha County (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom CONTRACTOR made the disclosure, (iii) a brief description of the PHI or ePHI disclosed, and (iv) a brief statement of the purpose of the disclosure. For repetitive disclosures which CONTRACTOR makes to the same person or entity, including the Waukesha County, for a single purpose, CONTRACTOR may provide (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures, and (iii) the date of the last of these repetitive disclosures. CONTRACTOR will make this log of disclosure information available to the Waukesha County within five (5) business days of the Waukesha County's request.
- b. *Exceptions from Disclosure Tracking.* CONTRACTOR need not record disclosure information or otherwise account for disclosures of PHI or ePHI that meet each of the following conditions:
 - i. the disclosures are permitted under this CONTRACT, or are expressly authorized by Waukesha County in another writing; and,
 - ii. the disclosure is for one of the following purposes:
 1. Waukesha County's Treatment, Payment, or Health Care Operations;
 2. in response to a request from the Individual who is the subject of the disclosed PHI or ePHI, or to that Individual's Personal Representative;
 3. made to persons involved in that individual's health care or payment for health care;
 4. for notification for disaster relief purposes;
 5. for national security or intelligence purposes;
 6. as part of a limited data set; or,
 7. to law enforcement officials or correctional institutions regarding inmates.

14. Disclosure Tracking Time Periods.

- a. CONTRACTOR must have available for Waukesha County the disclosure information required by this section for the six-year period preceding Waukesha County's request for the disclosure information.
- b. CONTRACTOR shall, upon request by Waukesha County, provide an accounting of the disclosures of an individual's PHI for any disclosure that meets all of the following conditions:
 - i. The disclosure relates to treatment, payment or health care operations of the Covered Entity; and
 - ii. The disclosure was made through an Electronic Health Record.
- c. CONTRACTOR only needs to provide information of such disclosures described in (B)(i) and (B)(ii), above, for the three years prior to the date on which the accounting is requested. CONTRACTOR shall provide all information necessary for Waukesha County to provide an accounting that includes all information required by DHHS by rule, once such rules are available.
- d. *Effective Date.* CONTRACTOR must begin making the accounting required under § 14(D) of this Agreement depending upon when CONTRACTOR acquires an Electronic Health Record. If CONTRACTOR had an Electronic Health Record as of January 1, 2009, § 14(D) of this Agreement will apply to PHI disclosures made by CONTRACTOR on or after January 1,

2014. If CONTRACTOR does not have an Electronic Health Record as of January 1, 2009, § 14(D) of this Agreement will apply to PHI disclosures made by CONTRACTOR after the later of:

- i. January 1, 2011; or
- ii. The date that CONTRACTOR acquires an Electronic Health Record.

15. Accounting to Waukesha County and to Government Agencies. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI or ePHI received from or on behalf of, or created for, Waukesha County available to Waukesha County, or at the request of Waukesha County, to the Secretary of the Department of Health and Human Services (HHS) or his/her designee, in a time and manner designated by Waukesha County or the Secretary or his/her designee, for the purpose of determining Waukesha County's compliance with the Privacy Rule. CONTRACTOR shall promptly notify Waukesha County of communications with HHS regarding PHI or ePHI provided by or created by Waukesha County and shall provide Waukesha County with copies of any information CONTRACTOR has made available to HHS under this provision.

16. Term and Termination:

- a. In addition to the rights of the parties established by the underlying Agreement, if Waukesha County reasonably determines in good faith that CONTRACTOR has materially breached any of its obligations under this CONTRACT, Waukesha County, in its sole discretion, shall have the right to:
 - i. exercise any of its rights to reports, access and inspection under this CONTRACT; and/or
 - ii. require CONTRACTOR to submit to a plan of monitoring and reporting, as Waukesha County may determine necessary to maintain compliance with this CONTRACT; and/or
 - iii. provide CONTRACTOR with a 20 (twenty) day period to cure the breach; or
 - iv. terminate the Agreement immediately.
- b. Before exercising any of these options, Waukesha County shall provide written notice to CONTRACTOR describing the violation and the action it intends to take.

17. Return or Destruction of PHI or ePHI: Upon termination, cancellation, expiration or other conclusion of the Agreement, CONTRACTOR shall:

- a. Return to Waukesha County or, if return is not feasible, destroy all PHI or ePHI and all Health Information in whatever form or medium that CONTRACTOR received from or created on behalf of Waukesha County. This provision shall also apply to all PHI or ePHI that is in the possession of subcontractors or agents of CONTRACTOR. In such case, CONTRACTOR shall retain no copies of such information, including any compilations derived from and allowing identification of PHI or ePHI. CONTRACTOR shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, CONTRACTOR shall certify on oath in writing to Waukesha County that such return or destruction has been completed.
- b. If CONTRACTOR destroys PHI or ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance. Acceptable methods for destroying PHI or ePHI include: (i) paper, film, or other hard copy media shredded or destroyed in order that PHI or ePHI cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of PHI or ePHI, unless the information is properly redacted so as to be fully de-identified.

- c. If CONTRACTOR believes that the return or destruction of PHI or ePHI or Health Information is not feasible, CONTRACTOR shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, CONTRACTOR shall extend the protections of this CONTRACT to PHI or ePHI and Health Information received from or created on behalf of Waukesha County, and limit further uses and disclosures of such PHI or ePHI, for so long as CONTRACTOR maintains the PHI or ePHI.

18. Miscellaneous:

- a. *Automatic Amendment:* Upon the effective date of any amendment to the regulations promulgated by HHS with regard to PHI or ePHI, the parties agree to take such action as is necessary to amend this agreement for Waukesha County and/or Contractor to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA.
- b. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Waukesha County to comply with the Privacy Rule.

Waukesha County

By: _____

Name: Laura Stauffer, CPCU, ARM

Title: Risk/Purchasing Manager

Date: _____

Contractor

By: _____

Name: _____

Title: _____

Date: _____