

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective immediately by and between Waukesha County Department of Health and Human Services (“Covered Entity”) and _____ (“Business Associate”) collectively known as the “Parties”.

1. BACKGROUND

This Agreement is specific to those services, activities, or functions performed by the Business Associate on behalf of the Covered Entity when such services, activities, or functions are covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH” Act), or Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) and all applicable implementing regulations, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule"), Notification in the Case of Breach of Unsecured Protected Health Information ("Breach Notification Rule"), and the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule") found at Title 45, Parts 160 and 164 of the Code of Federal Regulations, dealing with the security, confidentiality, integrity and availability of protected health or health-related information, as well as Breach Notifications (all such laws and regulations shall be collectively referred to herein as "HIPAA"). Services, activities, or functions covered by this Agreement include, but are not limited to the following list:

- a. Treatment
- b. Payment
- c. Health Care Operations
- d. As required or permitted by law
- e. For public health activities
- f. For health oversight activities
- g. For activities related to death
- h. For organ, eye or tissue donation
- i. For research
- j. To avoid a serious threat to health or safety
- k. For military, national security, or incarceration/law enforcement custody
- l. For workers' compensation
- m. To those involved in patient care or payment of patient care

The Covered Entity and Business Associate agree to comply with the requirements of HIPAA addressing confidentiality, security and the transmission of individually identifiable health information created, used or maintained by the Business Associate during the performance of the Contract and after Contract termination. Any conflict between provisions of any other contract, agreement, or Memorandum of Understanding (MOU) and this Agreement will be governed by the terms of this Agreement.

2. DEFINITIONS

The following terms shall have the following meaning in this Agreement. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms specified in the HIPAA Rules.

- a. **Business Associate.** “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103.,
- b. **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Waukesha County Department of Health and Human Services.

- c. **“Contract”** as used in this Agreement, means any written agreement between the parties for the provision of goods or services. Contract is used in a general manner to refer to any type of written agreement between the parties regardless of title, including any Memorandum of Understanding, Letter of Understanding, Agreement, Cooperative Agreement, or similar document.
- d. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, including the HITECH Rules.
- e. **“Breach”** means the acquisition, access, use, or disclosure of protected health information (PHI) in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI. PHI is presumed to be compromised unless Covered Entity or Business Associate, as applicable, documents that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
 - i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - ii. The unauthorized person who used the PHI or to the disclosure was made;
 - iii. Whether the PHI was actually acquired or viewed; and
 - iv. The extent to which the risk to the PHI has been mitigated.

Breach excludes:

- i. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a Covered Entity or Business Associate 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.
 - ii. Any inadvertent disclosure by a person who is authorized to access PHI at a Covered Entity or Business Associate to another person authorized to access PHI at the same Covered Entity or Business Associate, or organized health care arrangement in which the Covered Entity 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.
 - iii. A disclosure of PHI where a Covered Entity or Business Associate 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.
- f. **“Corrective Action Plan”** means a plan communicated by the Covered Entity to the Business Associate for the Business Associate to follow in the event of any threatened or actual use or disclosure of any PHI that is not specifically authorized by this Agreement, or in the event that any PHI is lost or cannot be accounted for by the Business Associate.
 - g. **“Disclosure”** means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
 - h. **“Electronic Protected Health Information” or “ePHI”** means that PHI of Covered Entity which is transmitted by Electronic Media (as defined in the HIPAA Privacy and Security Rule) or maintained in Electronic Media.
 - i. **“Incident”** means a use or disclosure of PHI by the Business Associate or subcontractor not authorized by this Agreement or in writing by the Covered Entity; a Breach, a complaint by an individual who is the subject of any PHI created or maintained by the Business Associate on behalf of the Covered Entity; and any Federal HIPAA-related compliance contact. Also included in this definition is any attempted, successful or unsuccessful, unauthorized access, modification, or destruction of PHI, including electronic PHI, or interference with the operation of any information system that contains PHI.

- j. **“Individual”** means the person who is the subject of Protected Health Information or the personal representative of an Individual as defined and provided for under applicable provisions of HIPAA.
- k. **“Protected Health Information (PHI)”** means that individually identifiable health information, including demographic information, created, used, disclosed, received, maintained, or transmitted in any form or media by the Business Associate, on behalf of the Covered Entity, that identifies an individual, or provides a reasonable basis to believe the information can be used to identify an individual, and where such information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual excluding:
 - i. Regarding a person who has been deceased for more than 50 years;
 - ii. Employment records held by Covered Entity in its role as employer;
 - iii. Education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g;
 - iv. Student records described at 20 U.S.C. 1232g(a)(4)(B)(iv).
- l. **“Unsecured Protected Health Information”** means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the HHS Secretary in guidance or as otherwise defined in the §13402(h)(2) of Pub. L. 111-5.

3. GENERAL RESPONSIBILITIES OF BUSINESS ASSOCIATE

- a. Business Associate shall not use or disclose any PHI except as permitted or required by the Contract or this Agreement, as permitted or required by law, or as otherwise authorized in writing by the Covered Entity, provided that such use or disclosure would not violate the HIPAA regulations if done by the Covered Entity.
- b. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e) and Wisconsin laws.
- c. **Minimum Necessary.** Business Associate shall not request, use or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request.
- d. Business Associate shall be directly responsible for full compliance with relevant requirements of the Privacy Rule to the same extent as the Covered Entity.
- e. Business Associate shall comply with Section 13405(b) of the HITECH Act when using, disclosing, or requesting PHI in relation to this Agreement by limiting disclosures as required by HIPAA.
- f. Business Associate shall refrain from receiving any remuneration in exchange for any Individual’s PHI unless (1) that exchange is pursuant to a valid authorization that includes a specification of whether PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual, or (2) satisfies one of the exceptions enumerated in Section 13405(e)(2) of the HITECH Act or HIPAA Rules.
- g. Business Associate shall refrain from marketing activities that would violate HIPAA, specifically Section 13406 of the HITECH Act.
- h. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.

- i. No later than ten (10) calendar days after discovery, the Business Associate will report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including potential or actual Breaches of Unsecured protected health information as required at 45 CFR 164.410, and any potential or actual security Incidents of which it becomes aware. Within thirty (30) days, the Covered Entity will ask for a final report of the Business Associate's investigation.
- j. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- k. Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524; the Business Associate will forward the individual's request to the Covered Entity to fulfill within five (5) calendar days so that the Covered Entity may satisfy the time limits to respond.
- l. The Business Associate will not respond to a request for amendment that the Business Associate receives directly from an individual or make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. The Business Associate shall forward such requests for amendments to the Covered Entity no later than within five (5) calendar days.
- m. Maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- n. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

4. DE-IDENTIFICATION of PHI

- a. **Creation and Use of De-identified Data.** In the event Business Associate wishes to de-identify PHI, it must first submit its proposed plan for accomplishing the conversion to Covered Entity for Covered Entity's approval, which shall not be unreasonably withheld provided such conversion meets the requirements of 45 CFR § 164.514. Business Associate may use de-identified PHI only as directed or otherwise agreed to by Covered Entity.
- b. **Re-identification Prohibited.** Unless otherwise agreed upon by the parties, in the event that Covered Entity provides Business Associate with de-identified PHI, Business Associate shall not be given access to, nor shall Business Associate attempt to develop on its own, any keys or codes that can be used to re-identify the data.

5. SAFEGUARDING AND SECURITY OF PROTECTED HEALTH INFORMATION

- a. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 CFR Part 164, Security Standards for the protection of Electronic Protected Health Information, with respect to ePHI, to prevent access, use, or disclosure of ePHI other than as provided for by this Agreement.
- b. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s). This includes using appropriate safeguards to prevent inappropriate and/or unauthorized access, use, or disclosure of PHI.
- c. Business Associate shall review and modify its privacy and security safeguarding measures as needed to continue providing reasonable and appropriate protection of PHI.

- d. Business Associate shall maintain documentation of privacy and security safeguarding measures as required by HIPAA.
- e. Business Associate shall develop, implement, maintain, and use reasonable and appropriate administrative, technical, and physical safeguards that: (1) reasonably and appropriately safeguard the confidentiality, integrity, and availability of PHI, in any form of media, that it creates, receives, maintains, uses or transmits on behalf of the Covered Entity; and (2) to prevent use and disclosure of PHI other than as provided for by this Agreement.
- f. Business Associate shall cooperate in good faith in response to any reasonable requests from the Covered Entity to discuss, review, inspect, and/or audit Business Associate's safeguards.

6. NO OFF-SHORE ACTIVITIES

Absent prior written approval of Covered Entity, Business Associate shall neither provide nor transmit Covered Entity's PHI, for any purpose, to any person or entity located outside the geographic boundaries of the United States, including employees, subcontractors, agents or other representatives of that person or entity. Absent prior written approval of Covered Entity, Business Associate shall neither provide nor facilitate access to Covered Entity's PHI for any person or entity located outside the geographic boundaries of the United States including employees, subcontractors, agents or other representatives of that person or entity.

7. WRITTEN REPORTS OF NONPERMITTED USES OR DISCLOSURES, SECURITY INCIDENTS OR BREACHES

The Business Associate agrees to report no later than ten (10) calendar days after discovery to the Covered Entity of any Incident, including reports of non-permitted uses or disclosures of PHI, Security Incidents or Breaches within the scope of this agreement, including an Incident reported to Business Associate by subcontractors or agents and cooperate with Covered Entity in its investigation of such event. Non-permitted Uses or Disclosures, Security Incidents, or Breaches caused by the Business Associate or subcontractors outside the scope of this agreement should be handled exclusively by the Business Associate or Subcontractor, as required by applicable law.

- a. **Reports of Non-permitted Use or Disclosure.** Business Associate agrees to report in writing to the Covered Entity any use or disclosure of the PHI not provided for by this Agreement and cooperate with Covered Entity in its investigation of such event.
- b. **Reports of Security Incidents.** For purposes of this Section, "Security Incident" shall have the same meaning as "Security Incident" in 45 CFR § 164.304. Business Associate agrees to report in writing to the Covered Entity of any Security Incident involving PHI of which it becomes aware and cooperate with Covered Entity in the investigation. Business Associate will report in writing any attempted but unsuccessful Security Incidents that do not result in any unauthorized access, use, disclosure, modification or destruction of PHI, or interference with an information system at Covered Entity's request, at least annually even in the absence of the Covered Entity's request.
- c. **Reports Related to Potential Breach of Unsecured PHI.**
 - i. Following the discovery of a Breach of Unsecured PHI, Business Associate shall notify in writing to the Covered Entity of the Breach. Such notification shall be made without unreasonable delay after discovering the Breach, but no later than ten (10) calendar days after its discovery.
 - ii. Business Associate's notice shall include, to the extent possible, the identification of each Individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during or as a result of the Breach. Business Associate shall also provide Covered Entity with at least the following information:
 - 1. A description of the Breach, including the date of Breach and the date of discovery of the Breach, if known;
 - 2. A description of the types of Unsecured PHI involved in the Breach;

3. Any steps individuals should take to protect themselves from potential harm resulting from the Breach;
 4. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches;
 5. And any other information requested by Covered Entity related to the Breach.
 6. Business Associate shall promptly supplement such report in writing with additional information as it becomes available, even if such information becomes available after Individuals have been notified of the Breach.
- iii. Business Associate agrees to cooperate with Covered Entity in the investigation of a Breach of Unsecured PHI and to cooperate with and participate in, to the extent requested by Covered Entity.
 - iv. The Business Associate will handle the Breach notifications to individuals, the HHS Office for Civil Rights (OCR) and potentially the media and will provide copies of communications to the Covered Entity at the same time the notifications are provided to individuals, the HHS Office for Civil Rights (OCR) and potentially the media.
In the event that:
 1. A Breach of Unsecured PHI occurs because of the action or inaction of Business Associate, its employees, agents, representatives, or Subcontractors; or
 2. A Breach occurs involving Unsecured PHI in Business Associate's possession, or PHI created, maintained, transmitted, or received by Business Associate or its employees, agents, representatives, or Subcontractors, Business Associate agrees that it shall provide such notification as may be required of Covered Entity by 45 CFR §§ 164.404, 164.406, and 164.408. Covered Entity has the right to review, direct, and approve or reject the contents or manner of such notification.
- d. **Discovery of Incident.**
The Business Associate must inform the Covered Entity by telephone call plus email or fax as soon as possible but no later than ten (10) calendar days of the discovery of any Incident, including but not limited to: the discovery of Breach of security of PHI in computerized form if the PHI was, or is reasonably believed to be acquired by an unauthorized person; the discovery of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement; or the discovery of potential loss of confidential data affecting this Agreement.
- i. The Incident shall be treated as “discovered” as of the first day on which the Incident is known to the Business Associate, or, by exercising reasonable diligence would have been known to the Business Associate.
 - ii. Notification shall be provided to the Covered Entity.
 - iii. Notification shall occur within the first business day that follows discovery of the Incident.
- e. **Mitigation.**
The Business Associate shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Covered Entity shall reasonably cooperate with the Business Associate’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.
- f. **Tracking and Accounting of Disclosures.**
So that Covered Entity may meet its accounting obligations under the Privacy Rule, Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. For each disclosure of PHI that Business Associate makes to the Covered Entity or to a third party that is subject to disclosure under 45 CFR § 164.528, Business Associate will record:
- i. The disclosure date,
 - ii. The name and (if known) address of the person or entity to whom Business Associate made the disclosure,
 - iii. A brief description of the PHI disclosed, and
 - iv. A brief statement of the purpose of the disclosure.

For repetitive disclosures which Business Associate makes to the same person or entity, including the Covered Entity, for a single purpose, Business Associate may provide:

- i. The disclosure information for the first of these repetitive disclosures,
- ii. The frequency, duration or number of these repetitive disclosures, and
- iii. The date of the last of these repetitive disclosures. Business Associate will make this log of disclosure information available to the Covered Entity within five (5) business days of the Covered Entity's request. Business Associate must retain the disclosure information for the six-year period preceding Covered Entity's request for the disclosure information.

g. **Audit.**

For purposes of determining Business Associate's or Covered Entity's compliance with HIPAA, upon request of Covered Entity or the Secretary of Health and Human Services, Business Associate shall:

- i. Make its HIPAA policies and procedures, related documentation, records maintained, and any other relevant internal practices and books relating to the use and disclosure of PHI, available to the Secretary of Health and Human Services or to the Covered Entity and
- ii. Provide reasonable access to Business Associate's facilities, equipment, hardware and software used for the maintenance or processing of PHI. Business Associate shall promptly notify Covered Entity of communications with the Secretary regarding PHI and shall provide Covered Entity with copies of any information Business Associate has made available to the Secretary under this Agreement.

h. **Response to Subpoena or Similar Notice.**

In the event Business Associate receives a subpoena or similar notice or request from any judicial, administrative or other party which would require the production of PHI received from, or created for, Covered Entity, Business Associate shall promptly forward a copy of such subpoena, notice or request to Covered Entity to afford Covered Entity the opportunity to timely respond to the demand for its PHI as Covered Entity determines appropriate according to its state and federal obligations.

i. **Investigation of Breach.**

The Business Associate shall immediately investigate the Incident or Breach and report in writing as practiced by the HIPAA Rules mandates prescribed at the time of the Incident no later than ten (10) calendar days to one of the contacts to the Covered Entity with the following information:

- i. Each individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident,
- ii. A description of the types of PHI that were involved in the Incident (such as full name, Social Security number, date of birth home address, account number, etc.).
- iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
- iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
- v. A description of probable causes of the improper use or disclosure,
- vi. A brief description of what the Business Associate is doing to investigate the Incident, to mitigate losses and to protect against further Incidents,
- vii. The actions the Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence, and
- viii. A Corrective Action Plan that includes the steps the Business Associate has taken or shall take to prevent future similar Incidents.

- j. **Covered Entity Contact Information.** To direct communications to above referenced Covered Entity’s staff, the Business Associate shall initiate contact as indicated herein. The Covered Entity reserves the right to make changes to the contact information by giving written notice to the Business Associate.

<p>Waukesha County Security Officer Rick McMillin Dept. of Admin. Info. Tech. 262-896-8533 RMcMillin@waukeshacounty.gov 515 W Moreland Blvd CG53 Waukesha, WI 53188</p>	<p>Waukesha County Privacy Officer Erik Weidig Corporation Counsel 262-548-7432 eweidig@waukeshacounty.gov 515 W Moreland Blvd AC 330 Waukesha, WI 53188</p>	<p>Waukesha County Health and Human Services Director Antwayne Robertson 262-548-7212 arobertson@waukeshacounty.gov 514 Riverview Ave Waukesha WI 53188</p>
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8. USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION BY SUBCONTRACTORS AND AGENTS OF THE BUSINESS ASSOCIATE

Subcontractors

If at any time PHI received from, or created or received by Business Associate on behalf of Covered Entity, is provided or made available by Business Associate to any of its Subcontractors, then Business Associate shall require each such Subcontractor to agree in writing to the same restrictions and conditions on the use or disclosure of PHI as are imposed on Business Associate by this Agreement and applicable law, including the HIPAA Rules. Business Associate shall ensure that all such Subcontractors that create, receive, maintain, or transmit PHI will implement reasonable and appropriate safeguards to protect such PHI.

9. COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS

If the Business Associate conducts any Standard Transaction for, or on behalf, of the Covered Entity, the Business Associate 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. The Business Associate 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 the Covered Entity 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);
- d. Changes the meaning or intent of the Standard’s Implementations Specification(s).

10. ACCESS TO PROTECTED HEALTH INFORMATION

At the direction of the Covered Entity or an Individual, the Business Associate agrees to provide access in accordance to 45 CFR 164.524(c) and Section 13405(e) of the HITECH Act to any PHI held by the Business Associate, which Covered Entity has determined to be part of the Covered Entity’s Designated Record Set, in the time and manner designated by the Covered Entity. This access will be provided to the Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet requirements under the Privacy Rule.

11. INTERNAL PRACTICES

The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Covered Entity, or to the federal Secretary of Health and Human Services (HHS) in a time and manner determined by the Covered Entity or the HHS Secretary or designee, for purposes of determining compliance with the requirements of HIPAA. Further, the Business Associate agrees to promptly notify the Covered Entity of communications with HHS regarding PHI and will provide the Covered Entity with copies of any PHI or other information the Business Associate has made available to HHS under this provision.

12. COVERED ENTITY'S OBLIGATIONS:

- a. **Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitation in its Notice of Privacy Practices to the extent such limitation affects Business Associate's permitted uses or disclosures.
- b. **Individual Permission.** Covered Entity shall notify Business Associate of changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted uses or disclosures.
- c. **Restrictions.** Covered Entity shall notify Business Associate of any restriction in the use or disclosure of PHI to which Covered Entity has agreed to the extent such restriction affects Business Associate's permitted uses or disclosures.
- d. **Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if used or disclosed by the Covered Entity.

13. TERM AND TERMINATION OF AGREEMENT

- a. **Term.** This Agreement shall take effect upon the Effective Date of the underlying Contract for goods or services and shall remain in effect until all PHI is returned to Covered Entity or destroyed in accordance with the terms of this Agreement.
- b. **Termination.** If either party reasonably determines in good faith that the other party has materially breached any of its obligations under this Agreement, the non-breaching party shall have the right to:
 - i. Exercise any of its rights to reports, access and inspection under this Agreement;
 - ii. Require the breaching party to submit to a plan of monitoring and reporting, as the non-breaching party may determine necessary to maintain compliance with this Agreement;
 - iii. Provide the breaching party with a thirty (30) day period to cure the breach; and/or
 - iv. Terminate this Agreement immediately.
- c. Before exercising any of these options, non-breaching party Entity shall provide written notice to breaching party describing the violation and the action it intends to take.

14. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION

Upon termination, cancellation, expiration or other conclusion of this Agreement, the Business Associate shall and shall ensure its Subcontractors that possess PHI or data derived from PHI ("Related Data") chose and fulfill one of the following options with respect to such PHI and Related Data will:

- a. Return PHI, and any Related Data, in whatever form or medium that Business Associate received from or created on behalf of the Covered Entity to the Covered Entity or, if return is not feasible, destroy all PHI and any Related Data and any compilation of PHI in any media or form. Covered Entity will be provided the opportunity to determine "feasibility" of returning PHI. The Business Associate agrees to ensure that this provision also applies to PHI of the Covered Entity in possession of subcontractors and agents of the Business Associate. The Business Associate agrees that any original record or copy of PHI in any media is included in and covered by this provision, as well as all original or copies of PHI provided to subcontractors or agents of the Business Associate. In such case, no copies of such PHI and Related Data shall be retained. The Business Associate agrees to complete the return or destruction as promptly as possible, but not more than **sixty (60)** calendar days after the conclusion of this Agreement. The Business Associate will provide written documentation evidencing that return or destruction of all PHI has been completed.
- b. If the Business Associate destroys PHI, and any Related Data, it shall be done with the use of technology or methodology that renders the PHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html>. Acceptable methods for destroying PHI include:
 - i. Paper, film, or other hard copy media: shredded or destroyed in order that PHI or Related Data 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).
 - iii. Redaction is specifically excluded as a method of destruction of PHI or Related Data, unless the information is properly redacted so as to be fully de-identified.

- c. If the Business Associate believes that the return or destruction of PHI, and any Related Data, is not feasible, the Business Associate shall provide written notification of the conditions that make return or destruction not feasible. This notice shall be provided as promptly as possible, but not more than **sixty (60)** calendar days after the conclusion of this Agreement. If the Business Associate and Covered Entity agree that return or destruction of PHI and Related Data is not feasible, the Business Associate shall extend the protections of this Agreement to PHI and Related Data received from or created on behalf of Covered Entity, and prohibit further uses or disclosures of the PHI and Related Data of the Covered Entity without the express written authorization of the Covered Entity. Subsequent use or disclosure of any PHI and Related Data subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

15. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that PHI from the Covered Entity may be subject to Wisconsin laws. Business Associate shall comply with the more restrictive protection requirements between state and federal law for the protection of PHI.

16. MISCELLANEOUS PROVISIONS

- a. **Indemnification.** Business Associate shall defend and hold Covered Entity and its officials, offices, administrators, employees and agents, harmless from all claims, liabilities, damages, or judgments involving a third party, including Covered Entity's costs and attorney fees, which arise as a result of Business Associate's failure to meet any of its obligations under this Agreement or violation of state or federal laws, including HIPAA and related regulations.
- b. **Automatic Amendment.** Upon the effective date of any amendment to HIPAA, the Privacy Rule or the Security Rule promulgated by HHS with regard to PHI, this Agreement shall automatically incorporate any change or modification of applicable state or federal law as of the effective date of the change or modification. The Business Associate agrees to maintain compliance with all changes or modifications to applicable state or federal law.
- c. **Independent Contractor Status.** The parties agree that in performing the Services and satisfying the obligations of this Agreement, Business Associate shall at all times be an independent contractor for Covered Entity and nothing in this Agreement shall be construed as creating an agency, employment, joint venture, partnership or other relationship. Covered Entity shall neither have nor exercise any control or direction over Business Associate. Business Associate shall avoid taking any action or making any representation or warranty whatsoever with respect to its relationship with Covered Entity which is inconsistent with its independent contractor status.
- d. **Conflicts.** Any provision of an underlying agreement that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement only to the extent of the contradiction, as necessary for the parties' compliance with HIPAA and to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.
- e. **Interpretation of Terms or Conditions of Agreement.** Any ambiguity in this Agreement shall be construed and resolved in favor of a meaning that permits the Covered Entity and Business Associate to comply with applicable state, federal law and HIPAA.
- f. **Survival.** All terms of this Agreement that by their language or nature would survive the termination or other conclusion of this Agreement shall survive.
- g. **Integration.** This Agreement contains the entire understanding between the Parties hereto relating to the subject matter herein and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any services agreement.
- h. **Waiver.** No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default.

This Agreement replaces any previously signed agreements between the Parties.

IN WITNESS THEREOF, the undersigned have caused this Agreement to be duly executed by their respective representatives.

The Business Associate further certifies with respect to the Business Associate Agreement that:

- a. It possesses legal authority to execute a Business Associate Agreement.
- b. Its governing body has duly adopted or passed as an official act, a resolution, motion or similar action authorizing the person identified as the official representative of the Business Associate to execute the Agreement, all understandings and assurances contained herein, and directing the authorization of the person identified as the official representative of the Business Associate to act in connection with the execution of the agreement and to provide such additional information as may be required.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____
Antwayne M. Robertson

By: _____

Title: Director-Waukesha County DHHS

Title: _____

Date: _____

Date: _____

Business Associate Contact Information:

Name: _____

Title: _____

Phone Number: _____

E-Mail Address: _____

Address: _____
(No P.O. Boxes)