

BUSINESS ASSOCIATE AGREEMENT
First Choice Community Healthcare, Inc.

THIS BUSINESS ASSOCIATE AGREEMENT (BAA) is entered into by and between **First Choice Community Healthcare, with a principal place of business at 2201 Centro Familiar SW, Albuquerque, NM 87105**, hereinafter referred to as “Covered Entity” and [REDACTED], hereinafter referred to as “Business Associate”, located at [REDACTED].

WHEREAS, Covered Entity and Business Associate acknowledge that each party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) and the statutes implementing regulations to maintain the privacy and security of Protected Health Information (PHI), and the parties intend this BAA to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e); and

WHEREAS, Covered Entity has a contractual relationship with Business Associate to provide products and or services through a Contractual Agreement dated [REDACTED], and during the course of Business Associate providing such products and/or services, Covered Entity may provide Business Associate with PHI in order for Business Associate to perform its contractual duties and responsibilities.

NOW, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby covenant and agree to the following:

1. DEFINITIONS

- a) **Administrative Safeguards** means the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect PHI and to manage the conduct of the Covered Entity's workforce in relation to the protection of PHI.
- b) **Business Associate** means [REDACTED], and shall have the same meaning as the term is defined in 45 CFR 160.103.
- c) **Covered Entity** means First Choice Community Healthcare, Inc, as defined in accordance with 45 CFR 164.103.
- d) **Data Aggregation Services** means the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities, as defined in 45 CFR 164.501 and as such term may be amended from time to time.
- e) **Designated Record Set** means a group of records maintained by or for a Covered Entity that consists of (I) the medical and billing records about individuals maintained by or for a health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used in whole or in part by or for the Covered Entity to make decisions about individuals. For these purposes, the term “Record” means any item, collection, or group of information that includes PHI and is maintained, collected, used or disseminated by or for the Covered Entity.
- f) **HIPAA** means the Health Insurance Portability and Accountability Act of 1996, the implementation of regulations promulgated thereunder by the US Department of Health and Human Services, the American Recovery and Reinvestment Act of 2009 (ARRA), and any future regulations promulgated thereunder, all as may be amended from time to time.
- g) **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act, set forth within P.L. 111-5, and all relevant regulations promulgated thereunder, as amended from time to time.

- h) **Individual** means the same as the term is defined in 45 CFR 160.103, and any amendments thereto, and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502.
- i) **Physical Safeguards** means the physical measures, policies and procedures to protect the Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- j) **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information in 45 CFR, Parts 160 and 164.
- k) **Protected Health Information (PHI)** is defined as meaning that contained in 45 CFR 160.103, and any amendments thereto, limited to the information created or received by the Business Associate from or on behalf of the Covered Entity.
- l) **Required by Law** shall have the same meaning as the term "required by law" in 45 CFR 164.512.
- m) **Secretary** is the Secretary of the United States Department of Health and Human Services or his/her designee.
- n) **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- o) **Security Rule** means the Standards for Security of Electronic Protected Health Information, as set forth in 45 CFR, Parts 160, 162 and 164.
- p) **Technical Safeguards** mean the technology and the policies and procedures for its use that protect PHI and control access to such.

2. Obligations of Business Associate

Business Associate agrees to:

- a) Not use or disclose PHI other than as permitted or as required by the Contractual Agreement or as required by law.
- b) Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA. Additionally, 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 the Covered Entity as required by the Security Rule.
- c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate in violation of the requirements of this BAA or the Privacy Rule and to communicate in writing such procedures to Covered Entity, if so requested.
- d) Ensure that any agent, including a subcontractor, to whom it provides PHI received from or created or received by Business Associate on behalf of Covered Entity, agrees, in writing, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information including implementation of reasonable and appropriate safeguards to protect PHI. The access and privileges granted to any such agency shall be the minimum necessary to perform the assigned functions.
- e) Provide reasonable access to PHI to Covered Entity, at the request of Covered Entity, in a Designated Record Set in order to meet the requirements of 45 CFR 164.524. This provision is applicable only if the Business Associate maintains PHI in a Designated Record Set.
- f) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity, and within a reasonable time and manner. This provision is applicable only if the Business Associate maintains PHI in a Designated Record Set.
- g) Comply with Subpart E of 45 CFR, Part 164, if appropriate, to the extent the Business Associate is to carry out one or more covered entity's obligations under that provision.
- h) Make internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA, the Privacy Rule, the Security Rule, the HITECH Act, and the ARRA.

- i) Document disclosures of PHI and information in its possession related to such disclosures and provide Covered Entity with such information, 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 CFR 164.528.
- j) Charge a reasonable fee for its services in connection with the access, amendment or accounting of PHI as contemplated under this BAA.
- k) Report to Covered Entity any use or disclosure of PHI not provided for by this BAA or the Privacy Rule of which it or its officers, employees, agents or subcontractors become aware, including any Security Incident of which it becomes aware, as soon as practicable but no longer than thirty (30) business days after the discovery of such disclosure. Covered Entity agrees that this BAA shall constitute notice and reporting by Business Associate to Covered Entity of unsuccessful Security Incidents which are not reasonably considered by Business Associate to an actual threat to the information system of Business Associate.
- l) Notify Covered Entity within five (5) business days after it, or any of its employees or agents, reasonably suspects that a breach of unsecured PHI may have occurred. Business Associate shall exercise reasonable diligence to become aware of whether a breach of unsecured PHI may have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to Covered Entity. Business Associate shall cooperate with Covered Entity in the determination as to whether a breach of unsecured PHI has occurred and whether notification to affected individuals of the breach is required by 45 CFR 164.400 *et seq.*, including continuously providing the Covered Entity with additional information related to the suspected breach as it becomes available. In the event that Covered Entity informs Business Associate that (i) Covered Entity has determined that the affected individuals must be notified because a breach has occurred and (ii) Business Associate is in the best position to notify the affected individuals of such breach, Business Associate shall immediately provide the required notice (1) within the time frame required by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by Covered Entity, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that Covered Entity indicates to Business Associate that Covered Entity will make the required notification, Business Associate will promptly take all other actions reasonably requested by Covered Entity related to the obligation to provide notification of a breach under 45 CFR 164.400 *et seq.* Business Associate shall indemnify and hold Covered Entity harmless from all liability, costs, expenses, claims, or other damages that Covered Entity, its related corporations, or any of its directors, officers, agents or employees may sustain as a result of a Business Associate's breach of its obligations under this Section.
- m) Provide access to PHI, if maintained in an Electronic Health Record, if so requested by an individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor costs in responding to the request. If an individual makes a direct request to Business Associate for access to a copy of PHI, Business Associate will promptly inform the Covered Entity of such request prior to grant the request.
- n) Not engage in any marketing activities or communications with any individual unless such marketing activities or communications are allowed by the terms of the Contractual Agreement and are made in accordance with the HITECH Act, the ARRA or any future regulations promulgated thereunder. Any payment for marketing activities will be in accordance with the HITECH Act, the ARRA or any future regulations promulgated thereunder.
- o) Abide by the provisions of the Security Rule and use all appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA. Business Associate shall:
 - i. Adopt written policies and procedures the same administrative, physical and technical safeguards required of the Covered Entity; and
 - ii. Abide by the most current guidance on the most effective and appropriate technical safeguards as issued by the Secretary.
- p) Acknowledge that it is directly subject to civil and criminal penalties if Business Associate violates the Security Rule.

- q) Not receive any remuneration, directly or indirectly, in exchange for any PHI, unless so allowed by the terms of the Contractual Agreement and in accordance with the HITECH Act, the ARRA and any future regulations promulgated thereunder.

3. Permitted Uses and Disclosures by Business Associate

- a) Except as otherwise limited in this BAA, Business Associate may use or disclose PHI (i) to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Contractual Agreement provided that such use or disclosure does not violate the Privacy Rule if done by Covered Entity or (ii) as required by law.
- b) Except as provided below, Business Associate may not use or disclose PHI in a manner that violates Subpart E of 45 CFR Part 164 if done by a covered entity.
 - 1. Business Associate may use and disclose PHI to perform services for Covered Entity including all services covered by and set out in the Contractual Agreement.
 - 2. Business Associate may use PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
 - 3. Business Associate may disclose PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are Required by Law or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that such PHI will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and the third party notifies Business Associate of any instances of which it is aware that the confidentiality of the PHI has been breached.
 - 4. Business Associate may de-identify any and all PHI in its possession obtained from Covered Entity and use such de-identified data in accordance with all de-identification requirements of the Privacy Rule.
 - 5. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1). Covered Entity shall be furnished with a copy of all correspondence sent by Business Associate to any federal or state authority.
 - 6. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity.
 - 7. Any use or disclosure of PHI by Business Associate shall be in accordance with the minimum necessary policies and procedures of Covered Entity and the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this BAA and the Contractual Agreement.

4. Obligations of Covered Entity

Covered Entity shall:

- a) Notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520 to the extent that such limitations may affect Business Associate's use or disclosure of PHI.
- b) Notify Business Associate in writing and in a timely manner of any changes in, or revocation of, permission by an individual to sue or disclose PHI to the extent that such changes may affect Business Associate's permitted or required use or disclosure of PHI.
- c) Notify Business Associate in writing and in a timely manner of any restrictions to use the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be

permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

6. Term and Termination

- a) The Term of this BAA shall be effective on the date of the Contractual Agreement. This BAA shall terminate upon the earlier of the termination of the Contractual Agreement or when all 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.
- b) Upon either party's knowledge of a material breach by the other party, such party shall either:
 - i. Provide an opportunity for the breaching party to cure the breach, end the violation or terminate this BAA if the breaching party does not cure the breach or end the violation within 30 (thirty) days;
 - ii. Immediately terminate this BAA if the breaching party has breached a material term of this BAA and cure is not possible; or
 - iii. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
- c) Upon termination of this BAA 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 shall retain no copies of the PHI.
- d) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon agreement by Covered Entity that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA 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. Other than as provided for in this Section, Business Associate will continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI for as long as Business Associate retains the PHI.

7. Miscellaneous

- a) Any reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
- b) The Parties agree to take such action as is necessary to amend this BAA from time to time, and/or enter into other agreements including, without limitation, chain of trust agreements, to the extent necessary for each Party to comply with the requirements of HIPAA and its regulations. All amendments shall be in writing and signed by both parties.
- c) The respective rights and obligations of the Business Associate under Section 6(c) shall survive the termination of this BAA.
- d) Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity and its respective successors or assigns any rights, remedies, obligations or liabilities whatsoever.
- e) Section headings are for convenience only and do not define, modify, expand or limit the terms and provisions of this BAA.
- f) This BAA shall be governed by and interpreted in accordance with the laws of the State of New Mexico. The venue for any legal or administrative action for the enforcement of this BAA or any provision with this BAA shall be Bernalillo County, New Mexico.
- g) This BAA shall be binding upon and shall inure to the benefit of the parties hereto and their respective

- permitted successors and assigns.
- h) If any portion of this BAA is inconsistent with the terms of the Contractual Agreement, the terms of this BAA shall prevail. Except as set forth above, the remaining provisions of the Contractual Agreement shall remain in full force and effect.
 - i) The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving rapidly and that amendment of this BAA may be required to ensure compliance with such changes. The Parties agree to take such action as may be necessary to implement the standards and requirements of HIPAA and other applicable state and federal laws relating to the security or confidentiality of PHI.
 - j) In the event that a federal or state law, statute, regulation, regulatory interpretation or court/agency determination materially affects this BAA, the Parties agree to negotiate in good faith any necessary or appropriate revisions to this BAA. If the Parties are unable to reach an agreement concerning such revisions within the earlier of 60 (sixty) days after the date of notice seeking negotiations or the effective date of the change in law or regulation, or if the change in law or regulation is effective immediately, either party may unilaterally amend this BAA to comply with the change in law upon written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Business Associate Agreement as of the date indicated.

COVERED ENTITY

First Choice Community Healthcare, Inc.

BUSINESS ASSOCIATE



By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____