

# **ASPIRUS, INC.**

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is effective \_\_\_\_\_, 201\_ (“Effective Date”), by and between **ASPIRUS, INC.**, a Wisconsin corporation (“Covered Entity”) and \_\_\_\_\_ (“Business Associate”).

The purpose of this Agreement is to satisfy certain obligations of Covered Entity under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 and 164) (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5 (“HITECH”) to ensure the integrity and confidentiality of Protected Health Information. Covered Entity has designated itself, and all entities which it owns or in which it has a controlling ownership interest, currently including the following legally separate covered entities, as an affiliated covered entity (“ACE”) pursuant to 45 CFR § 164.512: **Aspirus Buildings, Inc., Aspirus Doctors Clinic, Inc., Aspirus, Inc., Aspirus Clinics, Inc., Aspirus Grand View Hospital, Memorial Health Center, Inc., Aspirus Extended Services, Inc., Aspirus Specialists, Inc., Aspirus Network, Inc., Aspirus Ontonagon Hospital, Inc., Aspirus VNA Extended Care, Inc., Aspirus VNA Home Health, Inc., Aspirus Health Foundation, Inc., and Aspirus Wausau Hospital, Inc.**

**1.0** **Definitions.** Capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings given them in HIPAA and HITECH. For convenience of reference, the definitions of “Individually Identifiable Health Information” and “Protected Health Information” as of the Effective Date are as follows:

- 1.1 “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and: (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (ii) 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; and (a) that identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.2 “Protected Health Information” means Individually Identifiable Health Information that Business Associate receives from Covered Entity or from another business associate of Covered Entity of which Business Associate creates for Covered Entity which is transmitted or maintained in any form or medium. “Protected Health Information” shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USC § 1232g, or records described in 20 USC § 1232g(a)(4)(B)(iv), or employment records held by Covered Entity in its role as employer.
- 1.3 “Breach” shall mean the acquisition, access, use, or disclosure of Protected Health Information in a manner that: (i) is not permitted by the HIPAA Privacy Regulations; (ii) poses a significant risk of financial, reputational, or other harm to the Individual; and (iii) is not excluded from the definition of Breach found at 45 CFR. §164.402. In the event of any inconsistency between the definition of Breach in this Amendment and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
- 1.4 “Unsecured Protected Health Information” shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered unusable, unreadable,

or indecipherable to unauthorized Individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

- 2.0 Applicability of Agreement.** Covered Entity and Business Associate are parties to one or more contracts or relationships, written or unwritten, formal or informal in which Covered Entity provides Protected Health Information to Business Associate. As of the Effective Date, this Agreement automatically amends all existing contracts and relationships between Business Associate and Covered Entity involving the use or disclosure of Protected Health Information.
- 3.0 Privacy of Protected Health Information.** Business Associate is permitted or required to use or disclose Protected Health Information it creates or receives for or from Covered Entity or to request Protected Health Information on Covered Entity's behalf only as follows:
- 3.1 Functions and Activities on Covered Entity's Behalf. Except as otherwise limited in this Agreement, Business Associate is permitted to request the minimum necessary Protected Health Information on Covered Entity's behalf, and to use and to disclose the minimum necessary Protected Health Information to perform functions, activities, or services for or on behalf of Covered Entity.
- 3.2 Business Associate's Operations. Business Associate may use the minimum necessary Protected Health Information for Business Associate's proper management and administration, or to carry out Business Associate's legal responsibilities. Business Associate may disclose the minimum necessary Protected Health Information for Business Associate's proper management, administration, data aggregation or to carry out Business Associate's legal responsibilities only if:
- 3.2.1 The disclosure is required by law; or
- 3.2.2 Business Associate obtains reasonable assurance, from any person or organization to which Business Associate shall disclose Protected Health Information that the person or organization shall:
- a. Hold such Protected Health Information in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
- b. Promptly notify Business Associate (who shall in turn promptly notify Covered Entity) of any instance of which the person or organization becomes aware in which the confidentiality of such Protected Health Information was breached.
- 3.3 Prohibition on Unauthorized Use or Disclosure. Business Associate shall neither use nor disclose Protected Health Information except as permitted or required by this Agreement, as otherwise permitted in writing by Covered Entity, or as required by law. Business Associate may not receive compensation, directly or indirectly, in exchange for Protected Health Information, unless permitted by HIPAA OR HITECH. This Agreement does not authorize Business Associate to use or disclose Protected Health Information in a manner that would violate the requirements of HIPAA and its implementing regulations if done by Covered Entity, except as set forth in Section 3.2.
- 3.4 Information Safeguards. Business Associate shall develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards, in compliance with

HIPAA, HITECH, and any other implementing regulations issued by the United States Department of Health and Human Services. The safeguards shall be designed to preserve the integrity and confidentiality of, and to prevent any nonpermitted or violating use or disclosure of, Protected Health Information. Business Associate shall keep the safeguards current.

- 3.5 Subcontractors and Agents. Business Associate shall require any of its subcontractors and agents, to which Business Associate is permitted by this Agreement or in writing by Covered Entity to disclose Protected Health Information, to provide reasonable assurance, that such subcontractor or agent shall comply with the same privacy and security obligations as Business Associate with respect to such Protected Health Information.

#### **4.0 Individual Rights.**

- 4.1 Access. Business Associate shall, within twenty (20) days after Covered Entity's request, make available to Covered Entity or, at Covered Entity's direction, to the individual (or the individual's personal representative) for inspection and obtaining copies of any Protected Health Information about the individual that is in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 CFR § 164.524.
- 4.2 Amendment. Business Associate shall, within forty (40) days of receiving a written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of the Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 CFR § 164.526.
- 4.3 Disclosure Accounting. So that Covered Entity may meet its disclosure accounting obligations under 45 CFR § 164.528:
- 4.3.1 Disclosure Tracking. Starting on the Effective Date, Business Associate shall record information concerning each disclosure of Protected Health Information, not excepted from disclosure tracking under the Agreement Section 4.3.2 below, that Business Associate makes to Covered Entity or a third party. The information Business Associate shall record is: (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 Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure (items i – iv, collectively, the "disclosure information"). For repetitive disclosures Business Associate makes to the same person or entity (including Covered Entity) for a single purpose, Business Associate may provide (1) the disclosure information for the first of these repetitive disclosures, (2) the frequency, periodicity, or number of these repetitive disclosures, and (3) the date of the last of these repetitive disclosures. Business Associate shall make this disclosure information available to Covered Entity within forty (40) days after Covered Entity's request.
- 4.3.2 Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for disclosures of Protected Health Information that this Agreement or Covered Entity in writing permits or requires: (i) for purposes of treating the individual who is the subject of the Protected Health Information disclosed, payment for that treatment, or for the health care operations of Covered Entity; (ii) to the individual who is the subject of the

Protected Health Information disclosed or to that individual's personal representative; (iii) pursuant to a valid authorization by the person who is the subject of the Protected Health Information disclosed; (iv) to persons involved in that individual's health care or payment related to that individual's health care; (v) for notification for disaster relief purposes; (vi) for national security or intelligence purposes; (vii) as part of a limited data set; or (viii) to law enforcement officials or correctional institutions regarding inmates or other persons in lawful custody.

4.3.3 Disclosure Tracking Time Periods. Business Associate must have available for Covered Entity the disclosure information required by this Agreement, Section 4.3.1 for the six (6) years preceding Covered Entity's request for the disclosure information.

4.3.4 Disclosure of Individual's Protected Health Information ("PHI"). Business Associate shall, upon request by Covered Entity, 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 Covered Entity; and
- ii. The disclosure was made **through an Electronic Health Record.**

4.3.5 Timing of Disclosure. Business Associate shall provide information of such disclosures described in 4.3.4 i. and ii, above, for the three (3) years prior to the date on which the accounting is requested. Business Associate shall provide all information necessary for Covered Entity to provide an accounting that includes all information required by DHHS by rule, once such rules are available.

4.3.6 Effective Date. Business Associate shall begin making the accounting requirement under § 4.3.4 of this Agreement depending upon when Covered Entity acquires an Electronic Health Record. If the Covered Entity had an Electronic Health Record as of January 1, 2009, § 4.3.4 of this Agreement shall apply to PHI disclosures made by Covered Entity on or after January 1, 2014. If Covered Entity did not have an Electronic Health Record as of January 1, 2009, § 4.3.4 of this Agreement applies to PHI disclosures made by Covered Entity after the later of:

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

4.4 Restriction Requests; Confidential Communications. Business Associate shall comply with any agreements for confidential communications of which it is aware and to which Covered Entity agrees pursuant to 45 CFR § 164.522(b) by communicating via the enrollees using agreed upon alternative means or alternative locations.

4.5 Disclosures to Health Plans. Business Associate shall comply with requests by the Covered Entity or an Individual not to disclose or use Protected Health Information to a health plan or for payment or health care operations if the Protected Health Information

pertains to items or services for which the provider received payment in full from the Individual.

- 4.6 Inspection of Books and Records. Business Associate shall make its internal practices, books, and records, relating to its use and disclosure of Protected Health Information, available to Covered Entity and to the United States Department of Health and Human Services to determine compliance with 45 CFR Parts 160-164 or this Agreement.

**5.0 Breach Notification.** Business Associate shall notify Covered Entity of any Breach of Unsecured Protected Health Information. Business Associate shall immediately conduct an investigation and report in writing to Covered Entity's Privacy Officer at 333 Pine Ridge Boulevard, Wausau, WI 54401, not more than five (5) days after Business Associate learns of any such Breach. Business Associate's written notification shall include:

- 5.1 Each individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed.
- 5.2 A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.
- 5.3 A description of the types of Protected Health Information that was involved (such as full name, social security number, date of birth, home address, account number, etc.).
- 5.4 A brief description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against further occurrences.
- 5.5 The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the Breach.
- 5.6 A corrective action plan that includes the steps Business Associate has taken or will take to prevent future similar occurrences.
- 5.7 Any other information Covered Entity may reasonably request.

**6.0 Termination of Agreement.**

- 6.1 Right to Terminate for Breach. Covered Entity may terminate its contract or relationship with Business Associate if it determines, in its sole discretion, that Business Associate has breached any material provision of this Agreement and failed to cure the breach within the time specified in good faith by Covered Entity. Covered Entity may exercise this right to terminate the contract or relationship by providing Business Associate written notice of termination, stating the breach of the Agreement that provides the basis for the termination. Any such termination shall be effective immediately or at such other date specified in Covered Entity's notice of termination.
- 6.2 Obligations Upon Termination.
- a. Return or Destruction. Upon termination, cancellation, expiration, or other conclusion of the contract or relationship, Business Associate shall, if feasible, return to Covered Entity or destroy all Protected Health Information, including all Protected Health Information in whatever form or medium (including any electronic medium) and all copies of and any data or compilations derived from

and allowing identification of any individual who is a subject of Protected Health Information. Business Associate shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration, or other conclusion of the contract or relationship. Business Associate shall identify any Protected Health Information that cannot feasibly be returned to Covered Entity or destroyed. Business Associate shall limit its further use or disclosure of that Protected Health Information to those purposes that make return or destruction of that Protected Health Information infeasible.

- b. Continuing Privacy Obligations. Business Associate's obligation to protect the privacy of the Protected Health Information it created or received for or from Covered Entity shall be continuous and survive termination, cancellation, expiration, or other conclusion of the contract or relationship.
- c. Other Obligations and Rights. Business Associate's other obligations and rights and Covered Entity's obligations and rights upon termination, cancellation, expiration, or other conclusion of the contract or relationship shall be those as defined in the terms of the contract or relationship.

**7.0 Compliance with Requirements for Standard Transactions.** If Business Associate conducts in whole or in part Standard Transactions for or on behalf of Covered Entity, Business Associate shall comply, and shall require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 CFR 162. Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that:

- 7.1 Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- 7.2 Adds any data elements or segments to the maximum defined data set;
- 7.3 Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
- 7.4 Changes the meaning or intent of the Standard Transaction's implementation specification.

**8.0 General Provisions.**

- 8.1 HHS Guidance. Business Associate shall comply in all respects with the annual guidance issued by the United States Department of Health and Human Services, which are applicable to Business Associate.
- 8.2 Amendments to Agreement. Upon the effective date of any final regulations or amendments to final regulations promulgated by the United States Department of Health and Human Services with respect to Protected Health Information, Standard Transactions, Privacy, or Security, this Agreement and the contract or relationship of which it is part shall automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.

**9.0 Conflicts.** The terms and conditions of this Agreement shall override and control any conflicting term or condition of Agreement. All nonconflicting terms and conditions of Agreement remain in full force and effect.

**IN WITNESS WHEREOF,** Covered Entity and Business Associate execute this Agreement in multiple originals to be effective on the date first written above.

**ASPIRUS, INC.**

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Lori Peck

Vice President Finance

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Its: