

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is incorporated into the Underlying Contract known as **(Purchase of Services Contract # Statement of work, etc.)** \_\_\_\_\_ and is made between Shawano County ("Covered Entity"), and the \_\_\_\_\_ ("Business Associate"), collectively the "Parties."

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. Services, activities, or functions covered by this Agreement include, but are not limited to:

(Describe services/functions)

The Covered Entity and Business Associate agree to modify the Contract to incorporate the terms of this Agreement and 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. The parties agree that any conflict between provisions of the Contract and the Agreement will be governed by the terms of the Agreement.

### 1. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designed Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific Definitions:

- a. Business Associate: "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103 and, in reference to the party to this agreement, shall mean (enter text).
- 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 in this agreement, shall mean Shawano County.
- c. HIPAA Rules: "HIPAA Rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Part 160 and Part 164, as well as the requirements of the Health Information Technologies Economic and Clinical Health Act.

### 2. RESPONSIBILITIES OF BUSINESS ASSOCIATE

- a. Business Associate shall not use or disclose any Protected Health Information except as permitted or required by the Agreement or required by law or as otherwise authorized in writing by the Covered Entity, if done by the Covered Entity. Unless otherwise limited herein, Business Associate may use or disclose Protected Health Information for Business Associate's proper management and administrative services, to carry out legal responsibilities of Business Associated,

and to provide data aggregation services relating to health care operations of the Covered Entity if required under the Agreement.

- b. Business Associate shall not request, use, or disclose more than the minimum amount of Protected Health Information necessary to accomplish the purpose of the use or disclosure.
- c. Business Associate shall inform the Covered Entity if it or its subcontractors will perform any work outside the U.S. that involves access to, or the disclosure of, Protected Health Information.

### **3. SAFEGUARDING AND SECURITY OF PROTECTED HEALTH INFORMATION**

- a. Business Associate shall use appropriate safeguards, including complying with Subpart C of 45 CFR 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.
- b. 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.

### **4. REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE**

The Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410 and any surety incident.

- a. **Discovery of a Violation.** The Business Associate must inform the Covered Entity by telephone call, plus email or fax, within the next business day following the discovery of any violation.
  - i. The Violation shall be treated as "discovered" as of the first day on which the Violation 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 one of the contact persons listed in 4.d.
  - iii. Notification shall occur within the first business day that follows discovery of the violation.
- b. **Mitigation.** The Business Associate shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Protected Health Information, including complying with a reasonable Corrective Action Plan.

- c. Investigation of Breach.** The Business Associate shall immediately investigate the Violation and report in writing within one week to a contact listed in section 4. D. with the following information:
- i. Each individual whose Protected Health Information has been or is reasonably to have been accessed, acquired, or disclosed during the incident;
  - ii. A description of the types of Protected Health Information that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
  - iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed Protected Health Information or confidential data;
  - iv. A description of where the Protected Health Information 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 Business Associate is doing to investigate the incident, to mitigate losses, and to protect against further Violations;
  - 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 Violations.
- d. 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.

Covered Entity Compliance Officer	Dept. Privacy Officer	Covered Entity Security Officer
Brent Miller	Name	Steve Hansen
311 N. Main St.	Address	311 North Main St.
Shawano, WI 54166	Shawano, WI 54166	Shawano, WI 54166
715-524-4611	Phone	715-526-4615

## **5. USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION BY SUBCONTRACTORS OF THE BUSINESS ASSOCIATE**

In accordance with 45 CFR 164.502(e)(1) and 164.308(b), if applicable, the Business Associate shall 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 respect to such information.

## **6. COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS**

If the Business Associate conducts any Standard Transaction for, or on behalf of, a 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, 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 Specification(s); or
- d. Changes the meaning or intent of the Standard's Implementation Specification(s).

## **7. ACCESS TO PROTECTED HEALTH INFORMATION**

At the direction of the Covered Entity, the Business Associate agrees to provide access, in accordance with 45 CFR 164.524, to any Protected Health Information held by the Business Associate, which Covered Entity has determined to be part of Covered Entity's Designated Record Set, in the time and manner designated by the Covered Entity. This access will be provided to Covered Entity, or (as directed by Covered Entity) to an individual, in order to meet requirements under the Privacy Rule.

## **8. AMENDMENT OR CORRECTION TO PROTECTED HEALTH INFORMATION**

At the direction of the Covered Entity, the Business Associate agrees to amend or correct Protected Health Information held by the Business Associate, which the Covered Entity has determined is part of the Covered Entity's Designated Record Set, in the time and manner designated by the Covered Entity in accordance with 45 CFR 164.526.

## **9. DOCUMENTATION OF DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE**

The Business Associate agrees to document and make available to the Covered Entity, or (at the direction of the Covered Entity) to an individual, such disclosures of Protected Health Information in accordance with 45 CFR 164.528.

## **10. INTERNAL PRACTICES**

The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information 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.

## **11. TERM AND TERMINATION OF AGREEMENT**

- a. The Business Associate agrees that if in good faith the Covered Entity determines that the Business Associate has materially breached any of its obligations under this Agreement, the Covered Entity may:
  - i. Exercise any of its rights to report, access, and inspection under this Agreement;
  - ii. Require the Business Associate within a 30-day period to cure the breach or end the violation;
  - iii. Terminate this Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;
  - iv. Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.
- b. Before exercising either 11.ii or 11.iii, the Covered Entity will provide written notice of preliminary determination to the Business Associate describing the violation and the action the Covered Entity intends to take.

## **12. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION**

Upon termination, cancellation, expiration, or other conclusion of this Agreement, the Business Associate will:

- a. Return to the Covered Entity or, if return is not feasible, destroy all Protected Health Information and any compilation of Protected Health Information in any media or form. The Business Associate agrees to ensure that this provision also applies to Protected Health Information 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 Protected Health Information in any media is included in and covered by this provision, as well as all originals or copies of Protected Health Information provided to subcontractors or agents of the Business Associate. The Business Associate agrees to complete the return or destruction as promptly as possible, but not more than **30** business days after the conclusion of this Agreement. The Business Associate will provide written documentation evidencing that return or destruction of all Protected Health Information has been completed.
- b. If the Business Associate destroys Protected Health Information, it shall be done with the use of technology or methodology that renders the Protected Health Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance. Acceptable methods for destroying Protected Health Information include:

- i. For paper, film, or other hard copy media: Shredding or destroying in order that Protected Health Information cannot be read or reconstructed; and
- ii. For electronic media: Clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST)

Redaction is specifically excluded as a method of destruction of Protected Health Information. Information is redacted so as to be fully de-identified.

- c. If the Business Associate believes that the return or destruction of Protected Health Information is not feasible, the Business Associate shall provide written notification of the conditions that make return or destruction is not feasible. If the Business Associate and Covered Entity agree that return or destruction of Protected Health Information is not feasible, the Business Associate shall extend the protections of this Agreement to Protected Health Information and prohibit further uses or disclosures of the Protected Health Information of the Covered Entity without the express written authorization of the Covered Entity. Subsequent use or disclosure of any Protected Health Information subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

### **13. COMPLIANCE WITH STATE LAW**

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

### **14. MISCELLANEOUS PROVISIONS**

- a. Indemnification for Breach. Business Associate shall, to the extent allowed by Wisconsin Law, indemnify the Covered Entity for costs associated with any incident arising from the acquisition, access, use, or disclosure of Protected Health Information by the Business Associate in a manner not permitted under HIPAA Rules.
- b. Automatic Amendment. 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. 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 the applicable state and federal law.
- d. Survival. All terms of this Agreement that by their language or nature would survive the termination or other conclusion of this Agreement shall survive.

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

COVERED ENTITY

Print Name: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BUSINESS ASSOCIATE

Print Name: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_