

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “**Agreement**”), effective as of September 23, 2013 (the “**Effective Date**”), is entered into by and between _____ (“**Business Associate**”) and **Froedtert Health, Inc. f/k/a Froedtert & Community Health, Inc.**, 9200 West Wisconsin Avenue, Milwaukee, Wisconsin 53226 (“**FH**”), on behalf of its affiliates Froedtert Memorial Lutheran Hospital, Inc.; Community Memorial Hospital of Menomonee Falls, Inc.; St. Joseph’s Community Hospital of West Bend, Inc.; Froedtert & The Medical College of Wisconsin Community Physicians, Inc. f/k/a Froedtert Physician Partners, Inc.; West Bend Surgery Center, LLC; Froedtert Surgery Center, LLC; and any other affiliate FH designates as part of its affiliated covered entity for purposes of HIPAA (each affiliate is referred to as “**Covered Entity**”) (FH and Business Associate are each a “**Party**” and collectively the “**Parties**”).

The Parties have an agreement or agreements (the “**Underlying Agreement**”) under which Business Associate uses and/or discloses Protected Health Information (“**PHI**”) in its performance of the Services described below. The term “**Underlying Agreement**” specifically includes any and all written and oral agreements between FH or Covered Entity and Business Associate and purchase orders issued by Covered Entity, whether in existence as of the Effective Date or entered into at some future date, and all such agreements shall be collectively referred to as the “**Underlying Agreement**,” provided that the singular shall mean the plural as the context so requires.

The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the “**Privacy Rule**”) and the Standards for Security of Electronic Protected Health Information (the “**Security Rule**”) under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”). This Agreement, in conjunction with the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity, will be handled between Business Associate and Covered Entity and with third parties during the term of their Underlying Agreement and after its termination. This Agreement is intended to supersede any business associate agreement previously in place between the Parties. The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI.

- 1.1 **Services.** Pursuant to the Underlying Agreement, Business Associate provides services (“**Services**”) for Covered Entity that involve the use and/or disclosure of PHI. Except as otherwise specified herein, Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents, in accordance with Section 2.1.4 of this Agreement; or (ii) as otherwise permitted by or as required by the Privacy or Security Rule. All other uses and disclosures not authorized by this Agreement are prohibited. Except to the extent permitted in Sections 1.2.1, 1.2.2 and 1.2.3 of this Agreement, Business Associate may not use or disclose PHI in a manner that would violate the requirements of the Privacy or Security Rule if done by Covered Entity.
- 1.2 **Business Activities of Business Associate.** Unless otherwise limited herein, Business Associate may:
 - 1.2.1 Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

- 1.2.2 Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that Business Associate represents to Covered Entity, in writing, that: (i) the disclosures are Required by Law as provided for in 45 C.F.R. § 164.103; or (ii) Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. §§ 164.504(e)(4) and 164.314, and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- 1.2.3 If the Underlying Agreement provides for data aggregation services, provide data aggregation services relating to the health care operations of Covered Entity; provided, however, that under no circumstances may Business Associate disclose the PHI in its possession to another covered entity, whether or not aggregated, unless explicitly authorized by Covered Entity in writing.
- 1.2.4 If the Underlying Agreement provides for de-identification or when explicitly authorized by Covered Entity in writing, de-identify the PHI in its possession, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI.

- 2.1 Responsibilities of Business Associate.** With regard to its use and/or disclosure of PHI, Business Associate hereby agrees to do the following:
 - 2.1.1 Not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
 - 2.1.2 Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement.
 - 2.1.3 Report, in writing, to Covered Entity within five (5) business days any use or disclosure of PHI not provided for by this Agreement of which it becomes aware and any security incident of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and cooperate with Covered Entity in any mitigation or breach reporting efforts.
 - 2.1.4 In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information.
 - 2.1.5 Ensure that any agent or subcontractor to whom Business Associate provides PHI, as well as Business Associate, not provide, transmit or export PHI beyond the borders of the United States of America for any purpose or permit anyone located outside the borders of the United States of America access to PHI.

- 2.1.6 Within five (5) business days of a request by Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524.
- 2.1.7 Within five (5) business days, make any amendment(s) to PHI in a designated record set, if applicable, as directed or agreed to by Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526.
- 2.1.8 As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- 2.1.9 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- 2.1.10 Upon request, make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary and to Covered Entity for purposes of determining compliance with the HIPAA Rules.
- 2.1.11 Comply with the minimum necessary requirements under the HIPAA Rules.
- 2.1.12 Provide all of its employees and members of its workforce who will have access to PHI with general HIPAA-related training and education prior to allowing the employees and members of its workforce access to PHI.

2.2 Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by Business Associate, Covered Entity hereby agrees to do the following:

- 2.2.1 Inform Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, by posting on Covered Entity's website, to the extent such limitation may affect Business Associate's use or disclosure of PHI.
- 2.2.2 Inform Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent such limitation may affect Business Associate's use or disclosure of PHI.
- 2.2.3 Notify Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by Business Associate under this Agreement.
- 2.2.4 Except if Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of Business Associate, not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity.

- 2.3 Mutual Responsibilities of the Parties.** Each Party agrees that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.
- 2.4 No Sale of PHI.** Business Associate shall not directly or indirectly receive remuneration in exchange for PHI unless Business Associate: (i) has obtained explicit authorization from Covered Entity in writing; and (ii) has received a valid authorization from the Individual that specifies that Business Associate can further exchange PHI about the Individual for remuneration by the entity receiving the PHI, in compliance with the requirements of 45 C.F.R. § 164.508. The foregoing provision shall not apply to Covered Entity's payment to Business Associate for Services provided under the Underlying Agreement.

3. TERM AND TERMINATION.

- 3.1 Term.** The term of this Agreement shall commence on the Effective Date, and shall terminate on the termination date of the Underlying Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in Section 3.2 of this Agreement, whichever is sooner.
- 3.2 Termination for Cause.** Business Associate authorizes termination of this Agreement and the Underlying Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of this Agreement and:
- 3.2.1 Business Associate has not cured the breach within the time specified by Covered Entity; or
 - 3.2.2 Covered Entity determines, in its sole discretion, that cure is not possible and provides immediate written notice of termination.
- 3.3 Obligations of Business Associate upon Termination.** Within five (5) business days of termination of this Agreement, Business Associate agrees to, at Covered Entity's sole discretion, return or destroy all PHI in its possession pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) and retain no copies (which for purposes of this Agreement shall include destroying all backup tapes). Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify Covered Entity in writing and Covered Entity may disagree with Business Associate's determination. Said notification shall include: (i) a statement that Business Associate has determined that it is not feasible to return or destroy the PHI in its possession; and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. Any termination of the Underlying Agreement as provided in this Section 3, shall be without liability or further

obligation on the part of Covered Entity, except those provisions that survive any termination of the Underlying Agreement.

3.4 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Underlying Agreement.

4. CONFIDENTIALITY. In the course of performing under this Agreement, each Party may receive, be exposed to, or acquire the confidential information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential (“**Confidential Information**”) of the other Party. For purposes of this Agreement, “Confidential Information” shall not include PHI, the security of which is the subject of this Agreement and is provided for elsewhere. The Parties, including their employees, agents or representative shall: (i) not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement; (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement; and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (i) after it becomes publicly available through no fault of either Party; (ii) which is later publicly released by either Party in writing; (iii) which is lawfully obtained from third parties without restriction; or (iv) which can be shown to be previously known or developed by either Party independently of the other Party.

5. INSURANCE AND INDEMNIFICATION.

5.1 Insurance. Business Associate will procure and maintain in effect during the term of this Agreement: (i) general liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million aggregate; (ii) as applicable, professional liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million in aggregate; and (iii) workers’ compensation insurance coverage within statutory limits of state law in which Business Associate is located. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity.

5.2 Indemnification. Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity’s employees, directors, officers, subcontractors, agents or other members of its workforce from any costs, damages, expenses, judgments, losses, and attorneys’ fees arising from any breach of this Agreement by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including failure to perform its obligations under the Privacy Rule. Business Associate’s indemnification obligation shall survive the expiration or termination of this Agreement for any reason.

6. MISCELLANEOUS.

6.1 Business Associate. For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that Business Associate is otherwise a covered entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.504(a), as Business Associate for purposes of this Agreement.

- 6.2 Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive termination of this Agreement indefinitely.
- 6.3 Amendments; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- 6.4 Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- 6.5 Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever; provided, however, that the Parties agree the affiliates of FH and any covered entity participating in an organized health care arrangement with Covered Entity are third-party beneficiaries of this Agreement.
- 6.6 Notices.** Any notices required to be given hereunder shall be in writing and made by personal delivery, registered or certified mail, postage prepaid, or sent by nationally recognized express courier to such Party's address given below:

If to FH, to:
 Froedtert Health, Inc.
 9200 West Wisconsin Avenue
 Milwaukee, WI 53226-3596
 Attn: Privacy Officer

If to Business Associate, to:

 Attn: _____

With a copy to:
 Froedtert Health, Inc.
 9200 West Wisconsin Avenue
 Milwaukee, WI 53226-3596
 Attn: General Counsel

With a copy to:

 Attn: _____

Each Party named above may change its address and that of its representative for notices by the giving of notice thereof in the manner hereinabove provided.

- 6.7 Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or electronic copies hereof shall be deemed to be originals.
- 6.8 Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.
- 6.9 Waiver of Limitation of Liability and Disclaimer of Warranty.** Notwithstanding any term, condition or provision of the Underlying Agreement, any limitations of liability and/or disclaimers of warranty in the Underlying Agreement shall not apply to Business Associate's liability arising under this Agreement or any obligations arising under HIPAA.

- 6.10 Changes in Law.** The Parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The Parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the Parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the Parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement, set forth in an executed written agreement within thirty (30) days of receipt of notice from one Party to the other Party setting forth the proposed changes, then either Party may, by giving the other an additional sixty (60) days' written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms. In the event amendments or changes in existing law, general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the Parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either Party may provide the other at least sixty (60) days' advance notice of termination of this Agreement unless this Agreement would terminate earlier by its terms. Upon termination of this Agreement as hereinabove provided, neither Party shall have any further obligation hereunder except for: (i) obligations occurring prior to the date of termination; and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the terms of this Agreement.
- 6.11 Construction of Terms.** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the Department of Health and Human Services or the Office for Civil Rights from time to time.
- 6.12 Contradictory Terms.** Any provision of the 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 as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the HIPAA Rules and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.
- 6.13 Representation and Warranty.** Business Associate represents and warrants to Covered Entity that all of its employees, agents, representatives, and members of its workforce, whose services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to Business Associate, by contract or otherwise, sufficient to enable Business Associate to fully comply with all provisions of this Agreement
- 6.14 Ownership of Information.** Covered Entity shall retain all ownership and other rights to PHI that Business Associate receives, has access to, creates or maintains in order to perform the Services on behalf of Covered Entity and any information derived from the PHI.
- 6.15 Governing Law.** This Agreement and any Underlying Agreement shall be governed by Wisconsin law notwithstanding any conflicts of law provisions to the contrary.
- 7. DEFINITIONS.** The following terms used in this Agreement, whether or not capitalized, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy

Practices, Organized Health Care Arrangement, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Specific definitions include:

- 7.1 **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the Party identified as the Business Associate in the introductory paragraph of this Agreement.
- 7.2 **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the Party identified as the Covered Entity in the introductory paragraph of this Agreement.
- 7.3 **Electronic Protected Health Information or Electronic PHI.** “Electronic PHI” shall mean PHI which is transmitted by Electronic Media (as defined in the Security and Privacy Rules) or maintained in Electronic Media.
- 7.4 **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 7.5 **Privacy Officer.** “Privacy Officer” shall have the same meaning as the term “privacy official” as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 7.6 **Privacy Rule.** Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 7.7 **Security Rule.** Security Rule shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- 7.8 **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as subsequently updated, amended, or revised.

EFFECTIVE as of the Effective Date.

Froedtert Health, Inc. _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Operational Contact:
Name: Joshua Strassburg
Title: Purchasing Manager
Phone: 414-777-1946
E-Mail: HIPAA.BAA@froedtert.com

Operational Contact:
Name: _____
Title: _____
Phone: _____
E-Mail: _____