



HOPE Family Health
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BUSINESS ASSOCIATE AGREEMENT | As prepared by Miller & Martin PLLC, Attorneys at Law

This Business Associate Agreement (the "Agreement") is made by and between HOPE Family Health (herein referred to as "Covered Entity (HOPE Family Health)") and _____ (hereinafter known as "Business Associate"). Covered Entity (HOPE Family Health) and Business Associate shall collectively be known herein as the "Parties".

WHEREAS, Covered Entity (HOPE Family Health) and Business Associate entered into a business relationship for services memorialized in one or more separate agreements (the "Underlying Agreement(s)"), pursuant to which Business Associate is considered a "business associate" of Covered Entity (HOPE Family Health), as defined in 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"), as 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/or the Final Omnibus Rule, issued January 25, 2013 (the "Final Rule"); and

WHEREAS, the nature of the contractual relationship between Covered Entity (HOPE Family Health) and Business Associate involves the exchange of Protected Health Information ("PHI"), as that term is defined under HIPAA, as amended; and

For good and lawful consideration as set forth in the Underlying Agreement(s), Covered Entity (HOPE Family Health) and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA, as amended, its implementing regulations, the HITECH Act, the Final Rule, and applicable state law;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

A. **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

B. **Breach.** "Breach" shall have the same meaning as the term "breach" in §13400 of the HITECH Act, as amended, and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information. However, an impermissible use or disclosure of PHI will be presumed to be a breach, unless the breaching party demonstrates that there is a low probability that the PHI has been compromised.

C. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

D. **Electronic Protected Health Information or e-PHI.** "Electronic Protected Health Information" or "e-PHI" is a subset of Protected Health Information and shall mean Protected Health Information that is transmitted or maintained in any electronic media.

E. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and the Final Rule, and as may otherwise be amended from time to time.

F. **Protected Health Information.** "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity (HOPE Family Health).

G. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

H. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

I. Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and 164, Subparts A and C, as amended by the HITECH Act and as may otherwise be amended from time to time.

J. Unsecured Protected Health Information. “Unsecured Protected Health Information” or “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.

A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity (HOPE Family Health) as specified in the Underlying Agreement(s), provided that such use or disclosure would not violate the Privacy Rule, the Security Rule, or this Agreement.

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).

C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and Security Rule, as required by the HITECH Act, as amended by the Final Rule, to the same extent as Covered Entity (HOPE Family Health).

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.

B. To the extent Business Associate creates, receives, maintains, or transmits e-PHI at any time during the term of this Agreement, Business Associate shall appropriately safeguard the e-PHI in the following manner: (a) develop, document, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the e-PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity (HOPE Family Health) as required by the Security Regulation, the HITECH Act, the Final Rule, and amendments thereto; (b) ensure that any agent, including any subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees, via a written Business Associate Agreement between Subcontractor and Business Associate, to implement and be bound by the same restrictions, conditions, and requirements, including safeguards to protect the PHI, that apply to the Business Associate, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), where applicable; and (c) report to the Covered Entity (HOPE Family Health) any incident of which Business Associate becomes aware.

C. Business Associate shall immediately notify Covered Entity (HOPE Family Health) of any use or disclosure of PHI in violation of this Agreement, including, but not necessarily limited to, Breaches of Unsecured PHI, as required by 45 CFR 164.410, and any and all security incident(s).

D. Business Associate shall promptly notify Covered Entity (HOPE Family Health) of a Breach of Unsecured PHI following the first day on which Business Associate (or Business Associate’s employer, officer, director, or agent) knows of such Breach. Business Associate’s notification to Covered Entity (HOPE Family Health) hereunder shall:

1. Be made directly to Covered Entity (HOPE Family Health), except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security;
2. Include the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach; and
3. Be in substantially the same form as Exhibit A hereto.

E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate, and any subcontractor, if applicable, shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity (HOPE Family Health), or that created or received by Business Associate on behalf of Covered Entity (HOPE Family Health), agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

G. To the extent applicable, Business Associate shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity (HOPE Family Health) or, as directed by Covered Entity (HOPE Family Health), to an Individual, or the Individual's designee, in order to meet the requirements under 45 CFR §164.524.

H. To the extent applicable, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity (HOPE Family Health) directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity (HOPE Family Health) or an Individual, or the Individual's designee.

I. Business Associate shall, upon request with reasonable notice, provide Covered Entity (HOPE Family Health) access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity (HOPE Family Health) to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity (HOPE Family Health) for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity (HOPE Family Health) with information in a format and manner sufficient to allow Covered Entity (HOPE Family Health) to respond to the individual's request.

K. Business Associate shall, upon request with reasonable notice, provide Covered Entity (HOPE Family Health) with an accounting of uses and disclosures of PHI provided to it by Covered Entity (HOPE Family Health).

L. Business Associate shall make, and shall direct any subcontractor business associate to make, its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity (HOPE Family Health) available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity (HOPE Family Health) that seeks documents or other information held by Business Associate, and Business Associate shall direct any subcontractor business associate to do the same.

M. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out legal responsibilities of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. TERM AND TERMINATION.

A. Term. The Term of this Agreement shall be effective as of the earliest date one of the Underlying Agreement(s) is effective, if more than one, and on the date the Underlying Agreement is effective, if only one, and shall terminate when all of the Protected Health Information provided by Covered Entity (HOPE Family Health) to Business Associate, or created or received by Business Associate on behalf of Covered Entity (HOPE Family Health), is destroyed or returned to Covered Entity (HOPE Family Health), or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section IV.

B. Termination for Cause. Upon Covered Entity (HOPE Family Health)'s knowledge of a material breach by Business Associate, Covered Entity (HOPE Family Health) shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity (HOPE Family Health), terminate this Agreement;

2. Immediately terminate this Agreement if Business Associate, or one of its subcontractors, has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination.

1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity (HOPE Family Health), or created or received by Business Associate on behalf of Covered Entity (HOPE Family Health). This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity (HOPE Family Health) written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

3. Should Business Associate make a disclosure of PHI in violation of this Agreement, Covered Entity (HOPE Family Health) shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement(s).

V. CONSIDERATION. Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity (HOPE Family Health) in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH. Business Associate hereby recognizes that irreparable harm will result to Covered Entity (HOPE Family Health), and to the business of Covered Entity (HOPE Family Health), in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity (HOPE Family Health) shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, Business Associate shall indemnify and hold Covered Entity (HOPE Family Health) and its directors, officers, employees, and agents harmless from any liabilities, direct or indirect losses, damages, penalties, fines, judgments, expenses, costs (including attorneys' fees and court costs) arising from or related to Business Associate's or any of its director's, officer's, employee's, subcontractor's, or agent's violation of the terms of this Agreement. Additionally, Business Associate shall indemnify and hold Covered Entity (HOPE Family Health) and its directors, officers, employees, and agents harmless from any liabilities, direct or indirect losses, damages, penalties, fines, judgments, expenses, costs (including attorneys' fees and court costs) arising from or related to the violation of the terms of this Agreement by any third party to whom Business Associate discloses Protected Health Information. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity (HOPE Family Health) may have for breach of any part of this Agreement.

VII. MODIFICATION. This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity (HOPE Family Health) to comply with the requirements of the Privacy Rule and HIPAA and/or any amendments thereto.

VIII. INTERPRETATION OF THIS CONTRACT IN RELATION TO OTHER CONTRACTS BETWEEN THE PARTIES. Should there be any conflict between the language of this contract and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW. The Business Associate acknowledges that by accepting the PHI from Covered Entity (HOPE Family Health), it becomes a holder of medical records information under Tennessee state law and is subject to the provisions of Tennessee state law. If the HIPAA Privacy or Security Rules and Tennessee state law conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS.

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity (HOPE Family Health) to comply with the Privacy Rule and the Security Rule.

B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

C. Notice to Covered Entity (HOPE Family Health). Any notice required under this Agreement to be given Covered Entity (HOPE Family Health) shall be made in writing to:

HOPE Family Health

Attention: Chief Compliance Officer | Joey Forman, CCO

12124 New Highway 52

Westmoreland, Tennessee 37186

Phone: (615) 244-2000 ext 473

Email: joeyforman@hopefamilyhealth.org

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Phone: _____ Email: _____

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY (HOPE FAMILY HEALTH):

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____