



BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made by and between COMMON GROUND HEALTHCARE COOPERATIVE, a not for profit Wisconsin cooperative ("Covered Entity"), and the Party set forth on the signature of this Agreement ("Business Associate") (each a "Party" and collectively the "Parties").

1. BACKGROUND.

Business Associate performs functions, activities or services for, or on behalf of Covered Entity and Business Associate receives, has access to or creates Protected Health Information ("PHI"), including Electronic Protected Health Information ("EPHI"), in order to perform such functions, activities or services. The purpose of this Agreement is to set forth the terms and conditions of disclosure of PHI by Covered Entity to Business Associate, to set forth the terms and conditions of Business Associate's use and disclosure of Protected Health Information, and to ensure the confidentiality, integrity and availability of EPHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity. It is the intent of Covered Entity and Business Associate that this Agreement will meet the requirements of the Privacy Rule and the Security Rule.

2. DEFINITIONS.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Rule and Security Rule. 45 CFR Parts 160 and 164. Following are some of the key terms of this Agreement.

- 2.1 *ARRA*. "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 2.2 *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 2.3 *Limited Data Set*. "Limited Data Set" shall have the same meaning as a "limited data set" described in 45 CFR § 164.514(e)(2).
- 2.4 *Minimum Necessary*. "Minimum Necessary" shall have the same meaning as "minimum necessary" described in 45 CFR § 164.502(b).
- 2.5 *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and Part 164, subparts A and E.
- 2.6 *Security Rule*. "Security Rule" shall mean the Security Standards for the Protection of EPHI at 45 CFR Parts 160 and 164, subparts A and C.

2.7 *Protected Health Information.* “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, but shall be limited to the information created or received by Business Associate from or on behalf of Covered Entity.

2.8 *Electronic Protected Health Information.* “Electronic Protected Health Information” or “E PHI” shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, but shall be limited to the E PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

2.9 *Required By Law.* “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.

2.10 *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his designee.

2.11 *Security Incident.* “Security Incident” shall have the same meaning as “security incident” in 45 CFR § 164.304.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

3.1 *Use and Disclosure.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required By Law. Specifically, Business Associate Agrees to only use PHI for purposes reasonably related to its obligations under that certain Broker Agreement by and between Covered Entity and Business Associate. Business Associate shall also comply, where applicable, with 45 CFR Part 164 Subpart C with respect to E PHI, and the use and disclosure provisions of the Privacy Rule.

3.2 *Safeguards.* Business Associate agrees:

(a) To use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

(b) To develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to reasonably and appropriately protect the confidentiality, integrity, and availability of E PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity. Such administrative, technical, and physical safeguards must meet the requirements outlined at 45 CFR Part 164 Subpart C. Business Associate shall document and keep these security measures current in accordance with 45 CFR § 164.316.

(c) That it is obligated by law to meet the provisions of ARRA that are applicable to business associates.

3.3 *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.4 *Reports of Non-Permitted Use or Disclosure.* Business Associate agrees to promptly report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Where applicable, such report shall comply with the requirements outlined in Sections 3.5 and 3.12.

3.5 *Reports of Security Incidents.* Business Associate agrees to promptly report to Covered Entity any Security Incident of which it becomes aware. Where applicable, such report shall comply with the requirements outlined in Sections 3.4 and 3.12.

3.6 *Agents.* Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI (including EPHI) on behalf of the Business Associate agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including but not limited to, compliance with the applicable requirements of 45 CFR Parts 160 and 164. Such agreement between Business Associate and the agent must be made in writing and must comply with the terms of this Agreement and the requirements outlined in 45 CFR §§ 164.504(e) and 164.314.

3.7 *Designated Record Set.*

(a) If Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524. If Business Associate uses or maintains an electronic health record with respect to PHI of an Individual, Business Associate agrees to provide a copy of such information in an electronic format and to transmit such copy to an entity or person designated by Covered Entity. Any fee for providing a copy of such information in electronic form shall not be greater than Business Associate's labor costs in responding to the request for the copy.

(b) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

3.8 *Internal Practices.*

(a) Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or to the Secretary, in a time and manner selected by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(b) Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the security of EPHI created, received, maintained, or transmitted by Business Associate on behalf of, Covered Entity available to Covered Entity, or to the Secretary, in a time and manner selected by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Security Rule.

3.9 *Documentation of Disclosures.*

(a) Business Associate agrees to document such disclosures of PHI and information related to such disclosures 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. Beginning on the effective date of Section 13405(c) of ARRA, if Business Associate uses or maintains an electronic health record with respect to PHI, Business Associate agrees to document disclosures made through an electronic health record for treatment, payment, or health care operations, and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.

(b) Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with Section 3.9(a) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3.10 *Prohibition on the Sale of PHI or Electronic Health Records.* Business Associate shall comply with 45 CFR § 164.502(a)(5), which relates to the prohibition on the sale of electronic health records and PHI.

3.11 *Conditions on Certain Marketing and Fundraising Contacts.* Business Associate shall not use or disclose PHI for marketing or fundraising without consent of Covered Entity and only to the extent permitted by 45 CFR §§ 164.508(a)(3) and 164.514(f).

3.12 *Business Associate's Obligations Related to Breach of Unsecured PHI.*

(a) For purposes of this section, "Breach" and "Unsecured PHI" shall have the same meaning as "breach" and "unsecured protected health information," respectively, as such terms are defined by 45 C.F.R. § 164.402.

(b) Following the discovery of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity of the Breach. Such notification shall be made as soon as reasonably practicable after discovering the Breach, but no later than five (5) calendar days after its discovery.

(c) Business Associate's notice shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during or as a result of the Breach. Business Associate shall also provide Covered Entity with at least the following information: a description of the Breach, including the date of Breach and the date of discovery of the Breach, if known; a description of the types of Unsecured PHI involved in the Breach; any steps Individuals should take to protect themselves from potential harm resulting from the Breach; a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and any other information requested by Covered Entity related to the Breach. Business Associate shall promptly supplement such notice with additional information as it becomes available, even if such information becomes available after Individuals have been notified of the Breach.

(d) Business Associate agrees to cooperate with Covered Entity in the investigation of a Breach of Unsecured PHI and to cooperate with and participate in, to the extent requested by Covered Entity, the notification of Individuals, the media, and the Secretary of any Breach of Unsecured PHI.

(e) In the event that: (i) a Breach of Unsecured PHI occurs because of the action or inaction of Business Associate, its employees, agents, representatives, or subcontractors; or (ii) a Breach occurs involving Unsecured PHI in Business Associate's possession, or PHI created, maintained, transmitted, or received by Business Associate or its employees, agents, representatives, or subcontractors, Business Associate agrees that Covered Entity may, in its sole discretion, require Business Associate to provide such notification as may be required of Covered Entity by 45 CFR §§164.404, 164.406, and 164.408. Covered Entity shall have the right to review, direct, and approve or reject the contents or manner of such notification.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 *General Use and Disclosure.*

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in any underlying agreement or agreements provided that such use or disclosure would not violate the Privacy Rule, or the Security Rule if done by Covered Entity.

(b) All uses and disclosures of PHI must comply with the minimum necessary requirements under the Privacy Rule as well as the policies and procedures of Covered Entity. The Party disclosing PHI shall determine what constitutes the minimum necessary to accomplish the intended purpose of the disclosure. Until the effective date of further guidance or regulations issued on the meaning of minimum necessary, Business Associate shall use a Limited Data Set when using, disclosing, and requesting PHI, to the extent practicable. If using a Limited Data Set is not practicable, any use, disclosure, or request of PHI must be limited to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request. After the effective date of subsequent implementing guidance and/or regulations on the meaning of Minimum Necessary, Business Associate shall comply with such guidance or regulations.

4.2 *Specific Use and Disclosure.*

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration 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 becomes aware in which the confidentiality of the information has been breached.

(b) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

(c) Business Associate may use PHI to report violations of law to appropriate state and federal authorities, to the extent permitted or required by 45 CFR § 164.502(j)(1) and state law.

(d) Business Associate may de-identify PHI in accordance with the requirements outlined in the Privacy Rule. Data that has been de-identified will no longer be subject to the terms of this Agreement.

5. OBLIGATIONS OF COVERED ENTITY

5.1 *Privacy Practices.* Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

5.2 *Notice of Changes and Restrictions.* Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted or required uses and disclosures. Such notification shall include any restriction that Covered Entity has agreed to in accordance with 45 CFR § 164.522. If Business Associate receives a request to restrict the disclosure of PHI directly from an Individual, Business Associate shall notify Covered Entity of such request and Covered Entity shall be responsible for making the determination, in accordance with the Privacy Rule, as to whether Business Associate shall comply with the Individual's request.

5.3 *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 the Privacy Rule or the Security Rule if done by Covered Entity, except that Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.

6. TERM AND TERMINATION

6.1 *Term.* This Agreement shall be effective upon execution by the Parties and shall remain in effect for the duration of the relationship, functions or services giving rise to the necessity of a Business Associate Agreement, and until all of the 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.

6.2 *Termination.*

(a) *Termination Resulting from the End of Relationship, Functions or Services.* This Agreement shall terminate in the event that the underlying relationship, functions, or services that give rise to the necessity of a Business Associate Agreement terminate for any reason.

(b) *Termination for Cause.* Upon either Party's knowledge of a material breach of this Agreement by the other Party, the non-breaching Party must either:

1. Provide an opportunity for the breaching Party to cure the breach or end the violation, and if the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party, the non-breaching Party shall terminate this Agreement and any underlying agreement or agreements;
2. Immediately terminate this Agreement and any underlying agreement or agreement(s).

6.3 *Return or Destruction of PHI.*

(a) Except as provided in paragraph (b) of this section, upon termination of this Agreement 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.

(b) 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 mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate and its agents and subcontractors shall extend the protections of this Agreement 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 and/or its agents and subcontractors maintain such PHI.

7. MISCELLANEOUS

7.1 *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule, the Security Rule, or ARRA, or any other reference to a law or regulation, means the section or law as in effect as of the date of this Agreement or as subsequently amended.

7.2 *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, and ARRA.

7.3 *Survival.* The respective rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.

7.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the Privacy Rule, the Security Rule, and ARRA.

7.5 *Relationship to Other Agreement Provisions.* In the event that a provision of this Agreement is contrary to a provision of an underlying agreement or agreements under which Covered Entity discloses PHI to Business Associate, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of such underlying agreement or agreements between the Parties.

7.6 *Prior Business Associate Agreements.* Consistent with Section 7.5, this Agreement shall supersede any and all prior business associate agreement(s), or terms of other agreements addressing the privacy and security of PHI, between the Parties.

7.7 *Modification of Agreement.* No alteration, amendment or modification of the terms of this Agreement shall be valid or effective unless in writing and signed by Business Associate and Covered Entity.

7.8 *Notices.* Any notices required or permitted to be given under this Agreement by either Party shall be given in writing: (a) by personal delivery; (b) by electronic facsimile with confirmation sent by United States first class mail; (c) by bonded courier or nationally recognized overnight delivery service; or (d) by United States first class registered or certified mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses set forth below or to such other addresses as the Parties may request in writing by notice pursuant to this Section 7.8. Notices shall be deemed received on the earliest of personal delivery, upon the next business day after delivery by electronic facsimile with confirmation that the transmission was completed or upon receipt by any other method of delivery.

Covered Entity: Common Ground Healthcare Cooperative, c/o Compliance Officer, 120 Bishop's Way, Suite 150, Brookfield, WI 53005-6271

Business Associate (please print information clearly):

Name: _____

Address: _____

City, ST, ZIP: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers and made effective as of the date of execution.

Business Associate Name: _____

Signature: _____ Dated: _____

Title: _____

Signature: _____ Dated: _____

Name: Daren Allen

Title: Vice President, Business Development, Common Ground Healthcare Cooperative