

BUSINESS ASSOCIATE AGREEMENT

As required under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations at Title 45, Parts 160, 162 and 164 of the Code of Federal Regulations ("HIPAA"):

This Business Associate Agreement ("BA Agreement") is made and entered into by and between _____ (hereinafter referred to as "Business Associate") and Portage County (hereinafter referred to as "Portage").

RECITALS

Business Associate and Portage have entered into or will enter into an agreement or agreements under which Business Associate will use, disclose, access, create, receive, maintain or transmit Protected Health Information (as defined in Section 1.a, below) for or on behalf of Portage in the capacity as a business associate of Portage under HIPAA (the "Underlying Agreements").

Portage and Business Associate mutually agree to comply with: the requirements of HIPAA and its implementing regulations, including, but not limited to, Title 45, Parts 160 and 164, Subparts A and E of the Code of Federal Regulations (the "Privacy Rule"), dealing with the confidentiality of health or health-related information, Title 45, Parts 160 and 162, Subparts A and C of the Code of Federal Regulations (the "Security Rule"), dealing with the standards for the security of individual health information that is electronically maintained or transmitted, and Title 45, Part 162 of the Code of Federal Regulations ("Transaction Rule"), dealing with standards for electronic transactions; and the requirements of the Health Information Technology for Economic and Clinical Health Act and its implementation regulations ("HITECH"). Collectively, HIPAA and HITECH shall be referred to in this Agreement as the "HIPAA Rules." If any conflict exists between the terms of the Underlying Agreements and this BA Agreement, the terms of this BA Agreement shall govern.

NOW THEREFORE, the parties agree as follows:

1. Definitions:

a. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that (i) relates to the past, present or future physical or mental condition of any 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 that (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.

b. "Individual" means the person who is the subject of PHI, and shall include a person who qualifies under the Privacy Rule as a personal representative of the individual.

c. Capitalized and uncapitalized terms used in this BA Agreement, but not otherwise defined in this BA Agreement, shall have the same meaning as those terms in the HIPAA Rules.

2. Prohibition on Unauthorized Use or Disclosure of PHI: Business Associate shall not use or disclose any PHI that it accesses, creates, receives or maintains on Portage's behalf, except as required to perform the

services, functions or activities specified in the Underlying Agreements, as permitted or required by this BA Agreement, as permitted or required by law, or as otherwise authorized in writing by Portage. Except as otherwise indicated in this BA Agreement, Business Associate shall not use and disclose PHI in any manner that would violate the HIPAA Rules if done by Portage. Business Associate shall abide by and comply with all restrictions on the use or disclosure of PHI that Portage has agreed to, or must abide by, under 45 CFR § 164.522, if Portage has provided Business Associate with notice of the restriction.

3. Permissible Use and Disclosure of Protected Health Information: Business Associate may:

a. Use and disclose PHI as reasonably necessary to carry out the services, functions or activities required in the Underlying Agreements or as otherwise authorized in writing by Portage.

for the proper management and administration of
or
legal responsibilities

b. Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, but only if: (i) the disclosure is Required by Law; or (ii) Business Associate obtains reasonable assurances, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall: (A) hold such PHI 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 otherwise Required by Law; and (B) notify Business Associate (who in turn shall promptly notify Portage) of any instance in which the person or organization becomes aware of in which the confidentiality of such PHI has been breached.

c. Use and disclose PHI as Required by Law.

d. Use and disclose PHI for Data Aggregation purposes of the Health Care Operations of Portage, consistent with the requirements of the Privacy Rule.

4. Minimum Necessary: Business Associate shall comply with Portage's HIPAA policies and procedures, including, but not limited to, accessing, requesting, using and disclosing only the minimum necessary PHI to accomplish the purpose of the access, request, use or disclosure except as otherwise allowed by the HIPAA Rules. To the extent practicable, Business Associate will only access, request, use or disclose a Limited Data Set. Business Associate shall comply with any guidance issued by the Department of Health and Human Services from time to time pertaining to the minimum necessary standard.

5. Safeguarding PHI: Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent the use or disclosure of all PHI other than as provided by this BA Agreement. Business Associate shall comply with the Security Rule, where applicable, with respect to electronic Protected Health Information. Business Associate shall document and keep its safeguards and security measures current and available for inspection by Portage upon request by Portage.

6. Subcontractors and Agents: In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any Subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions and conditions that apply to the

Business Associate with respect to such information. This provision does not apply to the use or disclosure of PHI for Treatment purposes by Subcontractors who are providers of the Treatment.

7. Compliance with the Transaction Rule: If Business Associate conducts any Standard Transaction on behalf of Portage, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply with, each requirement of the Transaction Rule, including, but not limited to, 45 CFR §§ 162.410(a)(5) and 162.510(b), as applicable. 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 Portage that: (i) changes the definition, data condition, or use of a data element or segment in a Standard or operating rule; (ii) adds any data elements or segments to the maximum Defined Data Set; (iii) uses any code or data 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 (iv) changes the meaning or intent of the standard's Implementations Specification(s).

8. Access to PHI: At the direction of Portage, Business Associate agrees to provide access to and/or a copy of any PHI held by Business Associate or its Subcontractors or agents that Portage has determined to be part of Portage's Designated Record Set, in the time, manner and format designated by Portage. The access to or copy of PHI will be provided by Business Associate to Portage or, as directed by Portage, to an Individual or an Individual's designee, in order to meet the requirements under the Privacy Rule.

9. Amendment or Correction to PHI: At the direction of Portage, Business Associate agrees to amend or correct PHI held by Business Associate or its Subcontractors or agents that Portage has determined to be part of Portage's Designated Record Set, in the time and manner designated by Portage.

10. Reporting of Unauthorized Disclosures or Misuse of PHI: Business Associate shall report to Portage: (i) any use or disclosure of PHI not authorized by this BA Agreement or in writing by Portage; (ii) any suspected Breach of Unsecured PHI in accordance with 45 CFR §164.410; and/or (iii) any Security Incident. Business Associate shall make the report to Portage's Privacy Official not less than one (1) business day after Business Associate learns of such use or disclosure, suspected Breach of Unsecured PHI, or Security Incident. Business Associate's report shall identify: (i) the nature of the unauthorized use or disclosure, Breach or Security Incident; (ii) the PHI used or disclosed in the unauthorized use or disclosure, Breach or Security Incident; (iii) who made the unauthorized use or disclosure and who received the unauthorized disclosure; (iv) what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, Breach or Security Incident; and (v) what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure, Breach or Security Incident. Business Associate shall provide such other information, including a written report, as reasonably requested by Portage's Privacy Official, or his or her designee. Business Associate shall not provide notice of any Breach directly to an Individual or the media, unless specifically directed by Portage and in the time, manner and format approved by Portage.

11. Mitigating Effect of Unauthorized Disclosures or Misuse of PHI. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate or Portage of a use or disclosure of PHI by Business Associate or its Subcontractor or agents in violation of the requirements of this BA Agreement. Business Associate shall reimburse Portage for any and all costs and expenses of Portage in connection with: (i) mitigating a use or disclosure of PHI by Business Associate or its Subcontractors or agents in violation of this BA Agreement; or (ii) providing Breach notifications to Individuals or the media as a result of a Breach by Business Associate or its Subcontractors or agents.

12. Tracking and Accounting of Disclosures:

a. For each disclosure of PHI not excepted under subsection (b) below, Business Associate will record: (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 PHI disclosed, and (v) a brief statement of the purpose of the disclosure. For repetitive disclosures which Business Associate makes to the same person or entity for a single purpose, Business Associate may provide (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures, and (iii) the date of the last of these repetitive disclosures. Business Associate will make this log of disclosure information available to Portage within five (5) business days of Portage's request.

b. Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or account for disclosures of PHI that meet each of the following conditions: (i) the disclosures are permitted by this BA Agreement; and (ii) the disclosure is for one of the following purposes:

1. Portage's Treatment, Payment, or Health Care Operations (except as provided under HITECH or its implementing regulations with respect to uses and disclosures from electronic health records);
2. To communicate with the Individual who is the subject of the disclosed PHI; Incident to a use or disclosure permitted under the Privacy Rule;
3. Pursuant to a valid authorization;
4. As part of a Limited Data Set;
5. For national security or intelligence purposes; or,
6. To law enforcement officials or correctional institutions as provided under the HIPAA Rules.

c. Disclosure Tracking Time Periods. Business Associate must have available for Portage the disclosure information required by this section for the six (6) year period preceding Portage's request for the information.

13. Accounting to Portage and to Government Agencies. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or on behalf of, or created or received by Business Associate on behalf of Portage, available to Portage and/or the Secretary of the Department of Health and Human Services or his/her designee, for the purpose of determining the Portage's compliance with the HIPAA Rules. Business Associate shall promptly notify Portage of communications with HHS regarding PHI provided by or created by Business Associate and shall provide Portage with copies of any information Business Associate has made available to HHS under this provision.

14. Term and Termination.

a. This Agreement shall take effect upon execution and continue until terminated as provided in this Agreement or the conclusion, expiration or termination of the Underlying Agreements, whichever is earlier.

b. In addition to the rights of the parties established by the Underlying Agreements, if Portage reasonably determines in good faith that Business Associate has materially breached any of its obligations under this BA Agreement, Portage, in its sole discretion, shall have the right to: (i) exercise any of its rights to reports, access and inspection under this BA Agreement; (ii) require Business Associate to submit to a plan of monitoring and reporting, as Portage may determine necessary to maintain compliance with this BA Agreement; and/or (iii) terminate this BA Agreement and/or the Underlying Agreements with or without an opportunity, as determined in Portage's sole discretion, for Business Associate to cure the breach.

c. Before exercising any of these options, Portage shall provide written notice to Business Associate describing the violation and the action it intends to take. The rights and remedies shall be cumulative and Portage's decision to exercise a particular remedy shall not preclude it from exercising any and all other remedies available to it (including at law, in equity or in contract) at the same or a later time.

15. Indemnification Business Associate shall fully indemnify, hold harmless and defend Portage and its officers, employees, and agents, (collectively, - "Indemnified Parties") from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and costs), whether or not involving a third party claim, which arise out of, relate to, or result from: (i) any Breach or unauthorized use or disclosure of PHI by Business Associate or its Subcontractor or agents; or (ii) any breach of any covenant, obligation or duty of Business Associate under this Agreement or applicable law, in each case whether or not caused by the negligence or intentional acts or omissions of Business Associate or its Subcontractors and agents. Any and all limitations of liability in the Underlying Agreements shall not apply to Business Associate's obligations to indemnify or reimburse Portage under this BA Agreement, including Business Associate's obligations under Sections 11 and 15 of this BA Agreement.

16. Return or Destruction of PHI. Upon termination, cancellation, expiration or other conclusion of this BA Agreement, Business Associate shall:

a. Return to Portage or destroy, as directed by Portage, all PHI in whatever form or medium that Business Associate received, created or maintained for or on behalf of Portage. This provision shall also apply to all PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of such information, including any compilations derived from and allowing identification of PHI. Business Associate shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this BA Agreement. Within such thirty (30) day period, Business Associate shall certify on oath in writing to Portage that such return or destruction has been completed with respect to all PHI.

b. However, if Business Associate believes in good faith that the return or destruction of PHI is not feasible, Business Associate shall provide written notification to Portage of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, Business Associate shall extend the protections of this BA Agreement to the PHI that was not feasible to return or destroy, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate maintains the PHI.

17. Delegated Obligations of Portage under the HIPAA Rules. To the extent Business Associate is to carry out an obligation of Portage under the HIPAA Rules, Business Associate shall comply with the requirements of the HIPAA Rules that apply to Portage in the performance of such obligation.

18. Miscellaneous:

a. Automatic Amendment. Upon the effective date of any amendment to the HIPAA Rules, this BA Agreement shall automatically be amended so that the obligations imposed on Business Associate remain in compliance with the HIPAA Rules.

b. Interpretation: Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Portage to comply with the HIPAA Rules.

c. Reports: Upon request of Portage, Business Associate shall submit to Portage plans for compliance with the HIPAA rules, along with periodic reports of progress of the plan implementation every June and January of the term. The plans and progress reports shall be in the manner, form and timeframe determined by Portage.

d. Survival. Sections 10, 11, 15 and 16 shall survive termination, cancellation, expiration or other conclusion of this Agreement for any reason.

IN WITNESS WHEREOF, each of the undersigned has caused this BA Agreement to be duly executed in its name and on its behalf:

PORTAGE COUNTY

BUSINESS ASSOCIATE

By: _____
Title _____
Date _____

By: _____
Title: _____
Date: _____