

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between \_\_\_\_\_ and its affiliated entities (the “Business Associate”) and Children’s Hospital and Health System, Inc. and its affiliated covered entities, 9000 W. Wisconsin Avenue, Milwaukee, WI (collectively referred to as the “Covered Entity”) (each a “Party” and collectively the “Parties”).

The Federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA”) establish standards for protecting the confidentiality of identifiable patient health information. Final regulations issued pursuant to HIPAA govern the security of electronic identifiable patient health information (the “HIPAA Security Rule”). Pursuant to HIPAA and the HIPAA Security Rule, health care providers are required to enter into Business Associate Agreements with all contractors, agents and related and unrelated third parties that perform a function or activity on behalf of the health care provider that involves the disclosure of individually identifiable patient health information. This Agreement is intended to comply with Children’s Hospital and Health System’s obligations as a Covered Entity under HIPAA and the HIPAA Security Rule.

This Agreement amends any written and oral agreements existing as of the Effective Date between the Covered Entity and Business Associate, and such terms shall apply to any future written or oral agreement between such parties whether or not this Agreement is incorporated by reference, and all such agreements shall be collectively referred to as the “Underlying Agreement,” whether written or oral provided that the singular shall mean the plural as the context so requires. The term “Underlying Agreement” specifically includes, but is not limited to, purchase orders issued by the Covered Entity. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA, which are incorporated herein by reference.

### 1. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate agrees to not use or disclose protected health information (“PHI”) other than as permitted or required by this Agreement or as required by law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- (c) 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.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) To the extent that Business Associate has PHI in a designated record set, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably requested, 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 C.F.R. 164.524.
- (g) To the extent that Business Associate has PHI in a designated record set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity and in the time and manner reasonably requested by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered

Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

(i) 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 C.F.R. 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner reasonably requested, information collected to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

### 2. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

(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 the Underlying Agreement.

(b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI to third parties for the purpose of proper management and administration or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or Business Associate obtains written 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

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

### 3. ACCESS TO NETWORK

Business Associate agrees that while present at any Covered Entity facility and/or when accessing Covered Entity’s computer network(s), it and all of its employees, agents, representatives and subcontractors shall at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Security Rule.

### 4. HIPAA SECURITY RULE REQUIREMENT

Business Associate shall: (i) implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity; (ii) ensure that any agent, including a subcontractor, to whom Business Associate provides this information agrees to implement reasonable and appropriate safeguards; (iii) report to Covered Entity any security incident of which it becomes aware; and (iv) make Business Associate’s policies and procedures, and documentation required by the HIPAA Security Rule relating to such safeguards, available to the Secretary of Health and Human Services for purposes of determining Covered Entity’s compliance with the HIPAA Security Rule.

### 5. OBLIGATIONS OF COVERED ENTITY

(a) Upon request, Covered Entity shall provide Business Associate with a copy of its notice of privacy practices.

(b) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule.

6. TERM AND TERMINATION

(a) Term. The Term of this Agreement shall be effective as of April 14, 2003 ("Effective Date"), and shall terminate when the Underlying Agreement terminates and 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.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

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

(2) Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary and take any or all other actions for remedies allowed by law or in equity.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, 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.

(2) 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 the return or destruction infeasible. Business Associate 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 maintains such PHI.

**COVERED ENTITY:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

7. MISCELLANEOUS

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

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either Party or both Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) Survival. The respective rights and obligations of Business Associate under Section 6, "Term and Termination," of this Agreement shall survive the termination of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

(e) Contradictory Terms. Any provision of the Underlying Agreement that is 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 only to the extent it is impossible to comply with both the Contradictory Term and the terms of this Agreement.

(f) Response to Subpoenas. In the event the Business Associate receives a subpoena or similar notice or request from any judicial or administrative or other party arising out of or in connection with this Agreement, including, but not limited to, any Business Associate security measures, Business Associate shall promptly forward a copy of such subpoena, notice or request to Covered Entity, and afford Covered Entity the opportunity to be part of the decision making with regard to the subpoena, including but not limited to, responding to the subpoena.

(g) 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 and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of \_\_\_\_\_, 200\_\_\_\_.

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_