

# BUSINESS ASSOCIATE AGREEMENT

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## SUBURBAN HOSPITAL HEALTHCARE SYSTEM, INC.

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1. **DEFINITIONS.** The federal privacy regulations at 45 C.F.R. parts 160 and 164 are referred to herein as “HIPAA”. All capitalized terms used herein that are not otherwise defined have the meanings ascribed in HIPAA.
2. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION.**
  - 2.1 **Responsibilities of Business Associate.** Except as otherwise specified herein, Business Associate may make any and all uses of Protected Health Information (“PHI”) necessary to perform its obligations under existing contracts and any contracts it may enter into with the Covered Entity from time to time (the “Underlying Contracts”). All other uses not authorized by this Agreement are prohibited. Nothing in this Agreement shall prohibit Business Associate’s disclosure of PHI received from or created or received on behalf of the Covered Entity, to the Covered Entity. With regard to its use and/or disclosure of PHI obtained from Covered Entity, Business associate agrees to:
    - a. Use and/or disclose the PHI only as permitted or required by this Agreement or as permitted or required by law.
    - b. Use appropriate safeguards to prevent unauthorized use or disclosure of PHI.
    - c. Report to the Covered Entity, any use or disclosure of PHI of which Business Associate management becomes aware that is not permitted or required by this Agreement.
    - d. Require all of its subcontractors and agent that receive or use, or have access to, PHI under the Underlying Contracts, to agree, in writing, to essentially the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to Section 2.1 of this Agreement.
    - e. Make available its internal practices, books and records relating to the use and disclosure of PHI to the Secretary of HHS for purposes of determining the Covered Entity’s compliance with HIPAA.
    - f. Within 30 days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity and necessary to enable the Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual’s PHI in accordance with HIPAA.
    - g. Return to the Covered Entity or destroy, within 90 days of termination of this Agreement, the PHI in its possession and retain no copies, if it is feasible to do so. If return or destruction is infeasible, Business Associate agrees to extend all protections contained in this Agreement to Business Associate’s use and/or disclosure of any

retained PHI, and to limit any further uses and/or disclosures to the purpose that make the return or destruction of PHI infeasible.

- 2.2 Responsibilities of the Covered Entity. The Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between the Covered Entity and the individual that is the subject of PHI that may impact in any manner the use and/or disclosure of that PHI by Business Associate under this Agreement.
- 2.3 Effect of Changes of HIPAA Privacy Regulation on Responsibilities of the Parties. The terms of this Agreement have been included based solely on the understanding by the Parties that they are required by HIPAA. To the extent that any relevant provision of HIPAA is later eliminated or held to be invalid by a court of competent jurisdiction, the corresponding term or terms in this Agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes that the obligations of business associates or covered entities that are embodied in term(s) of this to this Agreement, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to such revised obligations. In addition, the terms of this Agreement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

3. **PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.** Unless otherwise limited herein, Business Associate may:

- a. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate.
- b. Disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate, provided that (i) the disclosures are permitted or required by law, or (ii) Business Associate has received from the third party reasonable assurances regarding the confidential handling of such PHI as required under HIPAA.
- c. With written authorization of each Covered Entity, aggregate the PHI of such Covered Entities obtained by Business Associate as a business associate, provided that the purpose of such aggregation is to provide the Covered Entities with data analyses relating to the Health Care Operations of the Covered Entities. Under no circumstances may Business Associate disclose PHI of one Covered Entity to another Covered Entity absent the written authorization of the Covered Entities involved.

4. **EFFECTIVE DATE AND TERMINATION.**

- 4.1 Effective Date. This Agreement shall become effective immediately upon contract signature and shall continue in effect until terminated as provided in this Section 4. Certain provisions and requirements of this Agreement shall survive the expiration or other termination of this Agreement in accordance with Section 6.1 herein.
- 4.2 Termination by the Covered Entity. The Covered Entity may terminate this Agreement and any underlying agreements if it determines that Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may provide Business Associate with prompt written notice of an alleged material breach and afford Business Associate an opportunity to cure the alleged breach. Failure to cure the material breach within 30 days

of receipt of notice is grounds for the immediate termination of this Agreement and its underlying agreements without penalty or further obligation.

- 4.3 Termination by Business Associate. If the Business Associate determines that a material condition of performance has changed under the existing agreement with the Covered Entity or this agreement, or that the Covered Entity has breached a material term of this Agreement, Business Associate may provide thirty (30) days notice of its intention to terminate this Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating, and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as any existing Agreement between the two parties remains in effect.
- 4.4 Termination without Cause. Either Business Associate or Covered Entity may terminate this Agreement and the associated underlying agreements without cause by providing six (6) months notice to other Party; provided however that either party may terminate immediately on notice if there is no Underlying Contract then in effect between the parties.
- 4.5 Automation Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement between the Parties.
- 4.6 Effect of Termination. Upon the event of termination pursuant to the above, Business Associate agrees to return or destroy all Protected Health Information, if it is feasible to do so. Prior to doing so, the Business Associate Further agrees to recover any Protected Health Information in possession of its subcontractors or agents. If it is not feasible, the Business Associate will notify the Covered Entity in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the Protected Health Information 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 the Business Associate's use and/or disclosure of any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible. If it is infeasible for Business Associate to obtain, from the subcontractor and agent any Protected Health Information in possession of the subcontractor or agent, the 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, and to limit any further uses and/or disclosures to purposes that make the return or destruction of the Protected Health Information infeasible.
5. **INDEMNIFICATION.** The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees and agents, against any loss, claim damage or liability that may result from any third party claim if and to the extent proximately caused by any breach of this Agreement by the other, as determined by a court of competent jurisdiction, and provided that the party seeking indemnification furnishes to the other prompt written notice and requisite authority, information and assistance to defend.
6. **MISCELLANEOUS.**
  - 6.1 Survival. Sections 2.1, 5, and 6.5 shall survive termination of this Agreement and continue indefinitely solely with respect to PHI Business Associate retains in accordance with Section 2.1(g).

- 6.2 Arbitration. If any controversy, dispute or claims between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally. If the dispute or claim is not resolved to the satisfaction of both Parties, then such matter shall be settled exclusively by arbitration under the rules of the American Arbitration Association. The Parties agree to be bound by the decision of the arbitrator as a final resolution of the matter.
- 6.3 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.4 Counterparts: Facsimiles. This agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- 6.5 LIMITATION OF LIABILITY. EXCEPT PURSUANT TO SECTION 5, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED IN THE BASIC CONTRACT, OR (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

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

COVERED ENTITY:

BUSINESS ASSOCIATE:

Suburban Hospital Healthcare System, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

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Date: \_\_\_\_\_

Date: \_\_\_\_\_