

BUSINESS ASSOCIATE AGREEMENT

St. Joseph-Buchanan County Health Department

and

Business Associate Name

This Business Associate Agreement (“Agreement”), effective April 14, 2003, (“Effective Date”), is entered into by and between *Business Associate Name* (“Business Associate”) and the St. Joseph-Buchanan County Health Department (“Covered Entity”) (each a “Party” and collectively the “Parties”) and, unless otherwise terminated as provided for herein, shall expire upon expiration of the Underlying Contracts.

1. **BACKGROUND AND PURPOSE.** The Parties have entered into one or more contracts or agreements, written or oral, and may from time to time enter into additional contracts or agreements, written or oral, that require Business Associate to be provided with or to have access to Protected Health Information (“PHI”) that is subject to the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) and codified at 45 C.F.R. parts 160 and 164 (“Privacy Rule”) (the Underlying Contracts”). This Agreement shall apply to and govern Business Associate’s receipt and use of PHI under the Underlying Contracts.
2. **DEFINITIONS.** Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement have the meanings ascribed in the Privacy Rule.

Examples of specific definitions:

- a) **Business Associate.** “Business Associate” shall mean [Insert Name of Business Associate].
- b) **Covered Entity.** “Covered Entity” shall mean St. Joseph-Buchanan County Health Department.
- c) **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).
- d) **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.

- e) Protected Health Information. “Protected Health Information” 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.
- f) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.
- g) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

3. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.**

- 3.1 Obligations of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate agrees to:
- a. assume full responsibility for the protection and maintenance of Protected Health Information in its possession and the possession of its agents, subcontractors, and employees. Business Associate shall require each employee who has access to Protected Health Information to sign a confidentiality agreement acceptable to Covered Entity.
 - b. not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
 - c. use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
 - d. report in writing to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate’s management becomes aware within seventy-two (72) hours of Business Associate knowledge of an unauthorized use or disclosure.
 - e. mitigate (after receiving written approval of Covered Entity of such mitigation) to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
 - f. require all of its subcontractors and agents 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 3.1 of this Agreement. Business Associate shall have subcontractors

and agents complete the “Statement of Acceptance” Form attached hereto as Schedule A and incorporated by reference.

- g. make available PHI necessary for Covered Entity to respond to individuals’ requests for access to PHI about them in the event that the PHI in Business Associate’s possession constitutes a Designated Record Set. Business Associate shall provide Covered Entity with the PHI within five (5) business days from the date of the request.
- h. make available PHI for amendment within five (5) business days of receipt of a written request and incorporate any amendments to the PHI within ten (10) business days in accordance with the Privacy Rule in the event that the PHI in Business Associate’s possession constitutes a Designated Record Set.
- i. provide Covered Entity with an accounting of disclosures for Individual in the form required by 45 C.F.R. § 164.528 within five (5) business days of Covered Entity’s request.
- j. comply with Covered Entity’s Notice of Privacy Practices, as the same may be modified by Covered Entity from time to time.
- k. make its internal practices, books and records relating to the use and disclosure of PHI available to the Covered Entity and the Secretary or HHS or designee for purposes of determining Covered Entity’s compliance with the Privacy Rule.
- l. return to Covered Entity, or destroy, within ninety (90) days of the termination of this Agreement with respect to any Underlying Contract, the PHI in its possession as a result of the Underlying Contract at issue 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 use and/or disclosure of any retained PHI, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

3.2 Permitted Uses and Disclosures of PHI by Business Associate. Except as otherwise specified in this Agreement, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the Underlying Contracts. Unless otherwise limited herein, Business Associate may

- a. use the PHI in its possession for its proper management and administration and to carry out the legal responsibilities of Business Associate;

- b. disclose the PHI in its possession to a third party for the purpose of Business Associates' proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the disclosures are required by law or Business Associate obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule;
 - c. provide Data Aggregation services relating to the health care operations of the Covered Entity; and
 - d. de-identify any and all PHI obtained by Business Associate under this Agreement, and use such de-identified data, all in accordance with the de-identification requires of the Privacy Rule.
- 3.3 Obligations of Covered Entity. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between 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.
- 3.4 Effect of Changes to the Privacy Rule. To the extent that any relevant provision of the Privacy Rule is materially amended in a manner that changes the obligations of Business Associates or Covered Entities that are embodied in the terms of this Agreement, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to these revised obligations.

4. **TERMINATION BY COVERED ENTITY.**

- 4.1 Covered Entity may immediately terminate this Agreement and the Underlying Contracts if Covered Entity determines that Business Associate has breached a material term of this Agreement, including, but not limited to:
- a. failure to notify Covered Entity of an unauthorized use or disclosure of Protected Health Information within the time frame required by 3.1(d);
 - b. failure to mitigate an unauthorized use or disclosure of Protected Health Information as required by 3.1(e);
 - c. failure to provide access to records as required by 3.1(j); or
 - d. failure to maintain the confidentiality of the PHI.

Alternatively, Covered Entity may choose in its sole discretion to:

- a. provide Business Associate with ten (10) days written notice of the existence of an alleged material breach and
- b. afford Business Associate an opportunity to cure said alleged breach upon mutually agreeable terms.

Nonetheless, in the event that mutually agreeable terms cannot be achieved within seven (7) days, Business Associate must cure said breach to the satisfaction of Covered Entity within thirty (30) days. If Business Associate fails to cure the breach within the timeframe set by Covered Entity and to the satisfaction of Covered Entity, then Covered Entity may immediately terminate this Agreement and the Underlying agreements.

- 4.2 Termination is Not Feasible. If Business Associate commits a material breach of its obligations pursuant to this Agreement; Business Associate did not take reasonable steps to cure the breach or end the violation or the steps were unsuccessful; and termination of this Agreement is not feasible then Covered Entity shall report the breach to the Secretary of HHS, if required by law.

5. **INDEMNIFICATION**. Business Associate agrees to indemnify, defend and hold harmless Covered Entity, and its affiliates, subsidiaries, officers, directors, agents and employees, against any loss, claim, damage, liability, cost or expense, including but not limited to attorneys' fees and court or other costs, that may result from any third party claim if and to the extent caused by any breach of this Agreement by Business Associate, its agents, employees or subcontractors.

6. **MISCELLANEOUS**

- 6.1 Interpretation. The terms of this Agreement shall prevail in the case of any conflict with the terms of any Underlying Contract to the extent and only to the extent necessary to allow Covered Entity to comply with the Privacy Rule.
- 6.2 Survival. The obligations of the Parties in this Agreement shall survive termination of this Agreement and continue indefinitely with respect to any obligation, debt, or liability which shall have previously accrued or remains to be performed on or after the date of termination, and with respect to PHI Business Associate retains in accordance with Section 3.2.1.

- 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 Injunctive Relief. In addition to any other remedies available to Covered Entity at law or in equity, Business Associate agrees that any breach of this Agreement will cause Covered Entity irreparable harm and a remedy at law would be inadequate; therefore, Covered Entity shall be entitled to injunctive relief without the necessity of proving actual damages and without posting a bond.

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

St. Joseph-Buchanan County Health Dept.

Business Associate

Signature

Signature

Printed Name

Printed Name

Title

Title

Signature, HIPAA Compliance

Date