

BUSINESS ASSOCIATE SUBCONTRACTOR AGREEMENT

This BUSINESS ASSOCIATE SUBCONTRACTOR AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 201__ (the “Effective Date”), by and between Lake County (“Business Associate”) and _____ (“Subcontractor”), (collectively, the “Parties”).

WHEREAS, Business Associate is a “Business Associate” as that term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended (“HIPAA”), and the Privacy, Security, Breach, Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164 (jointly “HIPAA Rules”) promulgated thereunder;

WHEREAS, Subcontractor is a “Subcontractor” as that term is defined in the HIPAA Rules, and may access, use, create, maintain, transmit, receive and/or disclose Protected Health Information (“PHI”) of the Business Associate;

WHEREAS, pursuant to the HIPAA Rules, the Subcontractor must agree in writing to certain mandatory provisions and must comply with HIPAA and the HIPAA Rules.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

1.2 All PHI that is created or received by the Business Associate and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Business Associate or its operating units to Subcontractor, or is created, maintained, accessed, transmitted, used, disclosed, or received by Subcontractor on Business Associate’s behalf shall be subject to this Agreement.

ARTICLE II PERMITTED USES AND DISCLOSURES BY SUBCONTRACTOR

2.1. Subcontractor may use, access, create, maintain, transmit, receive and disclose PHI as reasonably required or contemplated in connection with the performance of services provided to or on behalf of Business Associate as specified in any separate agreement between the parties, excluding the use or further disclosure of such PHI in a manner that would violate the requirements of the HIPAA Privacy Rule, if done by the Business Associate or Covered Entity.

2.2 Subcontractor may use and disclose such PHI for the proper management and administration or to carry out the legal responsibilities of Subcontractor.

2.3 Subcontractor agrees it will not use or further disclose PHI other than as permitted or required by this Agreement or as required by applicable law.

2.4 Subcontractor agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.

2.5 Subcontractor agrees to report to Business Associate any use or disclosure of PHI not provided for by this Agreement of which Subcontractor becomes aware.

2.6 Subcontractor agrees to ensure that any of its subcontractors that create, receive, maintain, use, disclose, access or transmit PHI on behalf of Subcontractor agree to the same restrictions, conditions, and requirements that apply to Subcontractor with respect to such information. Subcontractor agrees to satisfy this requirement by implementing a written agreement with each subcontractor setting forth the terms and conditions required under this Agreement.

2.7 In the event Subcontractor maintains a Designated Record Set, within five (5) days of a Business Associate's request for access to PHI in a Designated Record Set held by Subcontractor, Subcontractor agrees to provide reasonable access (including inspection and obtaining copies) to such Business Associate in order to meet the requirements of the HIPAA Privacy Rule.

2.8 In the event Subcontractor maintains a Designated Record Set, it will, at the request of the Business Associate, make available to Business Associate within five (5) days the PHI in a Designated Record Set held by Subcontractor for amendment and immediately incorporate any amendments to such information in accordance with the HIPAA Privacy Rule.

2.9 To the extent feasible, Subcontractor will maintain and, within five (5) days following the request of Business Associate, make available to Business Associate the information possible to assist Business Associate in providing an accounting of disclosures in accordance with the HIPAA Privacy Rule.

2.10 In the event that Subcontractor receives a request from an Individual or patient for Access, Amendment or Accounting purposes as described in Sections 2.7 – 2.9 above, Subcontractor will immediately notify Business Associate in writing of said request and provide reasonable assistance to Business Associate in responding to said request in a timely fashion so as to permit Business Associate to respond to the request within the time limits imposed under the HIPAA Rules and in any event, no later than five (5) days following the request. Business Associate will have sole and exclusive authority in overseeing the response to an Individual's or patient's request and Subcontractor will not provide any response to an Individual or patient without first notifying

Business Associate in writing and complying with the reasonable instructions from Business Associate.

2.11. Subcontractor will make its internal practices, books, and records relating to the use and disclosure of such PHI available to the Secretary of the U.S. Department of Health & Human Services (“HHS”) for purposes of determining the Business Associate’s and Subcontractor’s compliance with HIPAA and the HIPAA Rules. In the event that Subcontractor receives a request from HHS or any other state or federal agency relating to PHI, Subcontractor will provide immediate notice to Business Associate and grants Business Associate authority to direct the response to any such request to the extent it relates to PHI of Business Associate.

2.12. Subcontractor will, at termination of this Agreement, return or destroy all PHI that Subcontractor still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible and is agreed upon by Business Associate and Covered Entity, extend the protections of this Agreement to PHI and limit further uses and disclosures to those purposes that make the return or destruction of such PHI infeasible.

ARTICLE III RESPONSIBILITIES OF SUBCONTRACTOR

3.1. Subcontractor will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains or transmits on behalf of Business Associate as required under the HIPAA Security Rule.

3.2. Subcontractor will immediately report to Business Associate any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI or interference with system operations in an Information System affecting such electronic PHI of which Subcontractor becomes aware.

3.3. Subcontractor will ensure that any agent, including a subcontractor, to whom it provides such electronic PHI enters into a written agreement with Subcontractor and agrees to implement reasonable and appropriate safeguards to the same extent required by Subcontractor under this Agreement.

3.4. Breach Notification.

3.4.1. Subcontractor will report to Business Associate in writing any acquisition, access, use or disclosure of PHI in violation of HIPAA which could be or is considered a Breach of Unsecured PHI within five (5) days of discovery of the Breach.

3.4.2. Subcontractor will fully cooperate with Business Associate to investigate, mitigate, assess any risk, resolve, and notify any Individuals, media, and HHS as determined necessary by

Business Associate. Business Associate will have sole discretion in addressing and responding to any purported Breach.

3.5. To the extent Subcontractor agrees to carry out one or more of Business Associate's obligation(s) under the HIPAA Rules, Subcontractor will comply with such requirements of the HIPAA Rules that apply to Business Associate in the performance of such obligation(s).

3.6. Subcontractor may disclose PHI for the proper management and administration of Subcontractor or to carry out the legal responsibilities of Subcontractor, provided the disclosures are required by law, or Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.

3.7. Subcontractor will mitigate, to the extent practicable, any harmful effect that is known to Subcontractor or Business Associate related to the use, access, disclosure, transmission, reception, creation, or maintenance of PHI by Subcontractor.

ARTICLE IV RESPONSIBILITIES OF BUSINESS ASSOCIATE

4.1. Business Associate will notify Subcontractor of any limitation(s) in the Notice of Privacy Practices of Covered Entity, to the extent that such limitation may affect Subcontractor's use or disclosure of PHI.

4.2. Business Associate will notify Subcontractor of any restriction on the use or disclosure of PHI that Business Associate has agreed to or is required to abide by under the HIPAA Privacy Rule, to the extent that such restriction may affect Subcontractor's use or disclosure of PHI.

4.3. Business Associate will not request Subcontractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Business Associate or Covered Entity, except for use or disclosure of PHI for management and administration or to carry out legal responsibilities of Subcontractor.

ARTICLE V TERM AND TERMINATION

5.1. Term. The Term of this Agreement shall become effective on the Effective Date and shall continue for so long as Subcontractor creates, uses, discloses, maintains, transmits, or receives PHI on behalf of Business Associate.

5.2. Termination. If either Party fails to perform any material obligation pursuant to this Agreement, and (i) cure of the failure to perform the material obligation is possible and the failure to cure continues for a period of ten (10) days after the breaching Party is notified in writing by the non-breaching Party of said failure to perform, or; (ii) cure is not possible, then the non-breaching Party may terminate the Agreement immediately by written notice of same to the breaching Party. Business Associate, if the non-breaching Party, may also terminate any other agreement between the parties that involves the use or disclosure of PHI, in the event that Subcontractor has failed to perform any material obligation pursuant to this Agreement. In addition, Business Associate or Covered Entity may terminate this Agreement without cause immediately upon written notice to Subcontractor.

5.3. Obligations of Subcontractor Upon Termination.

5.3.1. Upon termination of this Agreement for any reason, Subcontractor shall return to Business Associate or, if agreed to by Business Associate, destroy all PHI created, maintained, used, disclosed, transmitted or received from Business Associate that Subcontractor still maintains in any form. Subcontractor shall retain copies of the PHI to the extent necessary to address legal, regulatory, and risk management processes and requirements.

5.3.2. If the return or destruction of PHI by Subcontractor is not feasible and Business Associate agrees in writing, Subcontractor will then extend the protections of this Agreement to the PHI and to limit further use.

5.3.3. The obligations set forth hereunder shall apply to all agents and subcontractors of Subcontractor that create, maintain, exchange, or receive PHI from Subcontractor and Subcontractor will take all necessary action to ensure that each such agent or subcontractor complies with these provisions upon termination.

5.3.4. The obligations of Subcontractor and each of its applicable agents and subcontractors under this Section shall survive the termination of this Agreement.

ARTICLE VI MISCELLANEOUS

6.1 Regulatory Reference. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

6.2 Preemption. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. In the event of an inconsistency between the provisions of the HIPAA Rules and other applicable confidentiality laws, the provisions of the more restrictive rule will control.

6.3 Independent Entities. None of the provisions of this Agreement is intended to create, nor shall any be construed to create, any relationship between the Parties other than that of independent entities contracting with each other solely to effectuate the provisions of the Agreement.

6.4 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.

6.5 Amendments. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Business Associate to comply with the requirements of its Business Associate Agreement with Covered Entity, the HIPAA Rules, or any more restrictive State law and any future regulations, statutes or other guidance concerning HIPAA that may affect this Agreement.

6.6 No Third-Party Beneficiaries. This Agreement shall not in any manner whatsoever confer any rights upon or increase the rights of any third-party, except for Covered Entity.

6.7 Survival of Terms. The obligations of Subcontractor under Articles II, III, V, and VI of this Agreement shall survive the expiration, termination, or cancellation of this Agreement and shall continue to bind Subcontractor, its agents, employees, subcontractors, successors, and assigns as set forth herein.

6.8 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Business Associate to comply with the HIPAA Rules.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

BUSINESS ASSOCIATE:

SUBCONTRACTOR:

Lake County

By: _____

By: _____

Its: _____

Its: _____