

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, effective \_\_\_\_\_ (“Effective Date”), is made by and between the Lake County (“Covered Entity”) and \_\_\_\_\_ (“Business Associate”). Covered Entity and Business Associate are also referred to in this Agreement individually as “Party” and collectively as the “Parties”.

### 1. Definitions:

Unless otherwise provided in this Agreement, capitalized terms used in this Agreement have the same meaning as set forth in HIPAA Privacy and Security Regulations (and particularly at 45 C.F.R. §§ 160.103 and 164.501), and applicable HITECH Act of 2009 amendments and regulations establishing standards for the privacy, security and security breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009.

### 2. Permitted Uses and Disclosure of Protected Health Information (hereafter “PHI”):

2.1 Services. Business Associate may assist in the performance of:

- a. A function or activity involving the use or disclosure of individually identifiable health information; or
- b. Any other function or activity regulated by HIPAA or HITECH amendments.

### 3. Responsibilities with Respect to Protected Health Information:

3.1 Responsibilities of Business Associate. With regard to the use and/or disclosure of PHI, Business Associate hereby agrees:

- a. Business Associate will not use or disclose PHI received from Covered Entity in any way other than as permitted or required under HIPAA or the HITECH Act of 2009, or regulations thereunder, or pursuant to Section 2 of this Agreement or as otherwise required by law.
- b. Business Associate will put in place reasonable precautions and appropriate safeguards necessary to prevent use or disclosure of PHI other than as provided by this Agreement.
- c. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or any agent or subcontractor, in violation of HIPAA or HITECH, or regulations thereunder, the provisions of this Agreement.
- d. Business Associate shall report to Covered Entity’s Privacy Officer when Business Associate becomes aware of uses or disclosures not provided for by this Agreement, or that are a breach of unsecured PHI as defined in 45 C.F.R. §165.500, et seq. or HITECH §13402.
- e. Business Associate shall require that any agents, including subcontractors, to whom Business Associate provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that, apply to the Business Associate with respect to such information.
- f. At the request of Covered Entity, Business Associate shall provide access to PHI, within 7 calendar days, to Covered Entity or as directed by Covered Entity to an Individual, in order to meet the requirements of HIPAA, or the HITECH Act of 2009, or regulations thereunder.
- g. Business Associate shall make available PHI for amendment and incorporate any amendments to PHI, within 7 calendar days of request by Covered Entity, in accordance with 45 C.F.R. § 164.526, and other applicable HIPAA and HITECH regulations.
- h. Business Associate shall make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, to the Secretary within 14 calendar days of Covered Entity’s written request, or as otherwise designated by the Secretary, for the purpose of the Secretary determining Covered Entity’s compliance with the Privacy Rules.
- i. Business Associate shall document disclosures of Protected Health Information 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, or other applicable HIPAA and HITECH regulations.

- j. Business Associate shall provide to Covered Entity or an Individual within 14 calendar days from Covered Entity's written request, information collected in accordance with Section 3.1 (i) of this Agreement, and other applicable HIPAA and HITECH regulations, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 C.F.R. § 164.528, or other applicable HIPAA and HITECH regulations.
  - k. Business Associate shall require appropriate training and education of its subcontractors or agents regarding the confidentiality of PHI and HIPAA and HITECH regulations.
  - l. Notwithstanding any other provisions herein, Business Associate agrees that, for any breach of unsecured PHI, as defined in 45 C.F.R. 164.400, et seq., by Business Associate, or any of its agent(s) or subcontractor(s), Business Associate shall undertake to give any and all notification(s) as may be required to any involved Individual(s), the press, and the Secretary, as may be required by either HIPAA or HITECH, or regulations thereunder, in addition to reporting any such incident to Covered Entity as provided herein.
  - m. Upon termination of its Agreement to provide service to Covered Entity, Business Associate will return all Protected Health Information. Business Associate further agrees to recover and return any PHI in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return any and all PHI, Business Associate will notify Covered Entity in writing within 7 calendar days of knowledge of same. In such case, the rights, duties, and obligations relating to PHI established, under HIPAA or the HITECH Act of 2009, or regulations thereunder, or under this Agreement shall survive termination of the Agreement.
  - n. Business Associate agrees to defend and indemnify the Covered Entity where the Business Associate, or its agents or subcontractors to whom it provides PHI on behalf of the Covered Entity, violate this Agreement, the provisions of HIPAA, or the provisions of the HITECH Act, whether by or through their negligent, reckless, or intentional actions.
- 3.2 Responsibility of the Covered Entity: With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees to notify Business Associate, in writing in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. part 160 and 164 that may impact in any manner the use or disclosure of PHI by Business Associate under this Agreement, including, but not limited to, restrictions on use and disclosure of PHI as provided in 45 C.F.R. § 164.522 agreed to by Covered Entity.

#### **4. Term and Termination:**

- 4.1 Term: This Agreement shall become effective on the date of signing and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is returned to Covered Entity, or, if it is infeasible to return PHI, protections are extended to such information, in accordance with the termination provisions in this Section and applicable HIPAA and HITECH regulations.
- 4.2 Termination for Cause: Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the Department of Health & Human Services.
- 4.3 Effect of Termination:
  - a. Upon termination of this Agreement, Business Associate shall return 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.

- b. In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return infeasible. Notification must be made in writing and must be received within 7 calendar days of termination of this Agreement. Upon notification that return of PHI is infeasible, Business Associate will 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 infeasible, for so long as Business Associate maintains such PHI.

## 5. Miscellaneous:

5.1 Amendments: This Agreement may not be modified, nor shall any provisions hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties or except as to comply with the requirements of the HIPAA Act of 1996, and HITECH Act of 2009. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.2 Notices: Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below:

If to Business Associate, to: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address, City, State: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Covered Entity, to: Lake County  
18 N. County St.  
9<sup>th</sup> Floor Purchasing Agent  
Waukegan, IL 60085

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

5.3 Regulatory References: A reference in this Agreement to a section in the HIPAA Act or HITECH Act of 2009 shall mean the section as in effect or as amended.

5.4 Survival: The respective rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement.

5.5 Interpretation: Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Act of 1996, and HITECH Act of 2009.

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

### COVERED ENTITY

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

### BUSINESS ASSOCIATE

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