

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into as of, between ("Covered Entity") and Southern Prairie Community Care, a Minnesota joint powers entity ("SPCC") ("Business Associate").

WHEREAS, Business Associate is creating a Health Care Delivery System ("HCDS") for the purposes of participating in a demonstration project with the Minnesota Department of Human Services.

WHEREAS, Covered Entity and Business Associate are engaged in discussions with the goal of securing Covered Entity's participation in the HCDS, which will result in Covered Entity and Business Associate, entering into a Participation Agreement.

WHEREAS, the ongoing discussions between Covered Entity and Business Associate (and any resulting Participation Agreement) require Business Associate to perform certain services on behalf of Covered Entity that may require Business Associate to create, receive, maintain, or transmit Protected Health Information, as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Pub Law 104-191, and its implementing regulations, 45 C.F.R. Parts 160 and 164 ("HIPAA Rules") including all current and subsequent amendments.

WHEREAS, HIPAA and its implementing regulations require that Covered Entity and Business Associate enter into an agreement to ensure that the Business Associate will appropriately safeguard Protected Health Information, as such term is defined under the HIPAA Rules.

WHEREAS, Covered Entity and Business Associate desire to conduct their relationship and services in compliance with HIPAA.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth, the parties to this Agreement hereto agree as follows:

1. DEFINED TERMS.

- a. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. "Business Associate" shall have the meaning given to such term at 45 CFR Section 160.103, and in reference to this Agreement, shall mean SPCC.
- c. "Covered Entity" shall have the meaning given to such term at 45 CFR Section 160.103, and in reference to this Agreement, shall mean Affiliated Community Medical Centers.

d. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE. Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required to perform services under a Participation Agreement into which the Parties may enter or as required by law.
- b. Use appropriate administrative, technical and physical safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to preserve the integrity and confidentiality of PHI, and to prevent Use or Disclosure of PHI other than as provided for by the HIPAA Rules and this Agreement.
- c. Report to Covered Entity any Use or Disclosure of PHI not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. Such incidents shall be reported without delay, but in no event later than fifteen (15) calendar days from the date the incident was discovered by the Business Associate. Notification from Business Associate to Covered Entity must include information regarding individuals affected and number of individuals affected, description of the Breach or situation, types of PHI involved, steps taken by Business Associate to investigate, mitigate and protect against similar future incidents, and contact information for the individual who is reporting the incident to Covered Entity. Covered Entity reserves the right to make further inquiries or request further action related to the reported incident. All reporting requirements related to the incident shall be handled by the Covered Entity.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to PHI. The Business Associate is not in compliance with the HIPAA Rules if it knew of a pattern of activity or practice of a Subcontractor that constitute a material breach or violation of the subcontractor's obligation under its contact with Business Associate or other arrangement, unless the Business Associate took reasonable steps to cure the breach or end the violation, and if such steps were unsuccessful terminated the Subcontractor or arrangement, if feasible.
- e. Make available PHI in a Designated Record Set to Covered Entity in order to timely meet the Covered Entity's obligations under 45 CFR 164.524. Any request received by the Business Associate from an Individual who is requesting access to a Designated Record Set shall be promptly forwarded to the Covered Entity. Promptly make any amendment(s) to PHI in a Designated Record Set as directed or agreed to pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations timely under 45 CFR 164.526. Any request received by the Business Associate from an Individual who is requesting amendment to a Designated Record Set shall be promptly forwarded to the Covered Entity.

- f. Maintain a system of documentation to make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. Any request received by the Business Associate from an Individual who is requesting an accounting of disclosures shall be promptly forwarded to the Covered Entity.
- g. To the extent Business Associate is to carry out one or more of Covered Entities obligations under Subpart E of 45 CFR Part 164, the HIPAA Privacy Rule, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation.
- h. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services or his or her designee, in a reasonable time and manner for the purpose of permitting the Secretary to determine compliance with the HIPAA Rules.

3. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- a. Business Associate may use or disclose PHI as permitted by HIPAA as necessary to further the HCDS discussions between the Parties or to perform the services set forth in any future Participation Agreement between Covered Entity and Business Associate.
- b. Business Associate may use or disclose PHI as Required by Law.
- c. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the minimum necessary standards at 45 CFR 164.502(b) and the Covered Entity's policies regarding minimum necessary.
- d. Business Associate may not use or disclose PHI in a manner that would violate Supart E of 45 CFR Part 164 if done by the Covered Entity, except for the specific Uses and Disclosures set forth below:
 - (1) 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.
 - (2) Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable 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.
 - (3) Business Associate may provide Data Aggregation services relating to the Health Care operations of the Covered Entity.

4. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS.

- a. Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices under 45 CFR § 164.520, to the extent that such limitations may affect Business Associate's Use or Disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use and Disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. PERMISSIBLE REQUESTS BY COVERED ENTITY. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate as described in Section 3 of this Agreement.

6. TERM AND TERMINATION

- a. **Term.** The Term of this Agreement and the obligations herein will be deemed effective as of the date of this Agreement and will terminate when the Parties determine that Covered Entity will not participate in the HCDS or a Participation Agreement between Covered Entity and Business Associate terminates or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section 6.
- b. **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by the Covered Entity.
- c. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity shall:
 - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent Use or Disclosure of the PHI, other

than as provided for in this Section, for as long as Business Associate retains the PHI;

- (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3 paragraphs (d) which applied prior to termination; and
 - (5) Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Agreement.

7. MISCELLANEOUS

- a. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect, or as amended, and for which compliance is required.
- b. **Amendment.** The parties will take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable laws.
- c. **Interpretation.** Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.
- d. **Penalties.** Business Associate shall comply with the HIPAA Rules standards and regulations and understands that Business Associate is subject to all regulatory rules and related penalties as set forth in the HIPAA Rules.

IN WITNESS WHEREOF, Covered Entity and Business Associate execute this Agreement to be effective as of the date written above.

SPCC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

Title: _____

Date: _____