

EXHIBIT
HIPAA - BUSINESS ASSOCIATE AGREEMENT

As required under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)

Kenosha County (**Covered Entity**) requires Business Associate Agreements with persons and organizations (**Business Associates**) who perform or assists in the performance of a function or activity that involves the use or disclosure of individually identifiable health information. Therefore, this Agreement is hereby entered into by and between **Business Associate** and **Covered Entity** as indicated on signature page of this HIPAA Agreement.

This Agreement is required because it has been concluded that the **Business Associate** is performing specific functions on behalf of **Covered Entity** that have been determined to be covered by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy Rule”); and

WHEREAS the terms of this Agreement are necessary to comply with the requirements of HIPAA’s implementing regulations, Title 45, Parts 160 and 164 of the Code of Federal Regulations (“Privacy Rule”), dealing with the confidentiality of health or health-related information, and Title 45, Part 142 of the Code of Federal Regulations (“Security Rule”), dealing with the standards for the security of individual health information that is electronically maintained or transmitted, and Title 45, Part 162 of the Code of Federal Regulations (“Transaction Rule”) dealing with standards for electronic transactions; and

WHEREAS, **Business Associate** may have access to Protected Health Information (as defined below) in fulfilling its responsibilities as a **Business Associate**;

THEREFORE, in consideration of compliance with the HIPAA Privacy Rule, the **Business Associate** agrees to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule.

1. Definitions:

In the event of an inconsistency between the provision of this Agreement and mandatory provision of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provision of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

- a. Protected Health Information (PHI) means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and (ii) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.
- b. Individual means the person who is the subject of PHI, and shall include a person who qualifies under the Privacy Rule as a personal representative of the Individual.
- c. Capitalized terms used in this Agreement, but not otherwise defined shall have the same meaning as those terms in the HIPAA Rules.

2. Prohibition on Unauthorized Use or Disclosure of PHI: **Business Associate** shall not use or disclose any PHI it creates or receives on behalf of the **Covered Entity** except as permitted or required by a Contract or this Agreement, as permitted or required by law, or as otherwise authorized in writing by the **Covered Entity**.

3. Use and Disclosure of Protected Health Information: **Business Associate** may use or disclose PHI only for the following purpose(s):

- a. for the proper management and administration of named function or activity and provision of healthcare services within the named function or activity or,
- b. for meeting its obligations as set forth in any agreements between the parties evidencing their business relationship, or
- c. as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by **Covered Entity** or as required by applicable law, rule or regulation, or,

- d. for Data Aggregation purposes for the Health Care Operations of the **Covered Entity**. [45 CFR §164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)] or,
- e. for use in **Business Associate** operations as outlined in paragraph 4 below.

4. Use of PHI for Use in Business Associate's Operations: **Business Associate** may use and/or disclose PHI it creates or receives on behalf of the **Covered Entity** to the extent necessary for **Business Associate's** proper management and administration, or to carry out **Business Associate's** legal responsibilities, only if:
- a. The disclosure is permitted or required by law; or
 - b. **Business Associate** obtains reasonable assurances, evidenced by written contract, from any person or organization to which **Business Associate** shall disclose such PHI that such person or organization shall:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose for which **Business Associate** disclosed it to the person or organization, or as required by law: and
 - (ii) notify **Business Associate** who shall in turn promptly notify the **Covered Entity**, of any instance which the person or organization becomes aware of in which the confidentiality of such PHI was breached.
5. Safeguarding and Maintenance of PHI: For all PHI it creates or receives from or receives on behalf of the **Covered Entity**, **Business Associate** shall develop, implement, maintain, and use:
- a. appropriate administrative, technical, and physical safeguards to prevent the improper use or disclosure of all PHI, in any form or media: and,
 - b. appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted PHI.

Business Associate shall document and keep these safeguards and security measures current and available for inspection, upon request. **Business Associate's** security measures must be consistent with HIPAA's Security regulations, Title 45, Part 142 of the Code of Federal Regulations ("Security Rule"), once these regulations are effective.

6. Subcontractors and Agents: **Business Associate** agrees to ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by the **Business Associate** on behalf of the **Covered Entity**, agree to the same restrictions and conditions that apply to the **Business Associate** with respect to such information. This provision does not apply to the use or disclosure of PHI for Treatment by subcontractors who are providers of Health care within the named function or activity.
7. Compliance with Electronic Transactions and Code Set Standards: If **Business Associate** conducts any Standard Transaction as defined in 45 CFR §164.504 on behalf of the **Covered Entity** within the named programs, **Business Associate** shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulations. **Business Associate** shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of the **Covered Entity** that:
- a. changes the definition, data condition, or use of a data element or segment in a standard Implementation Specification; or
 - b. adds any data elements or segments to the Maximum Defined Data Set; or
 - c. uses any code or data elements that are either marked "not used" in the standard's Implementation Specification(s) or are not in the standard's Implementation Specifications(s); or
 - d. changes the meaning or intent of the standard's Implementations Specification(s).

Business Associate agrees to comply with all provisions of the HIPAA Standards for Electronic Transactions rules regarding additional requirements for health plans [if it is determined that the **Covered Entity** is a Health Plan] as set forth in CFR §162.925 as follows:

- a. General rules.
 - (i) if an entity requests the **Business Associate** to conduct a Transaction as a standard Transaction, the **Business Associate** must do so.
 - (ii) the **Business Associate** may not delay or reject a Transaction, or attempt to adversely affect the other entity or the Transaction, because the Transaction is a standard Transaction.
 - (iii) the **Business Associate** may not reject a standard Transaction on the basis that it contains data elements not needed or used by the **Business Associate** (for example, coordination of benefits information).

- (iv) the **Business Associate** may not offer an incentive for a health care provider to conduct a Transaction covered by this part as a Transaction described under the exception provided for in CFR 45 §162.923(b).
- (v) the **Business Associate** that operates as a health care clearinghouse, or requires an entity to use a health care clearinghouse to receive, process, or transmit a standard Transaction may not charge fees or costs in excess of the fees or costs for normal telecommunications that the entity incurs when it directly transmits, or receives, a standard transaction to, or from, the **Business Associate**.
- b. Coordination of benefits. If the **Business Associate** receives a standard Transaction and coordinates benefits with another Health Plan (or another payer), it must store the coordination of benefits data it needs to forward the standard Transaction to the other Health Plan (or other payer).
- c. Code sets. The **Business Associate** must meet each of the following requirements:
 - (i) Accept and promptly process any standard Transaction that contains codes that are valid, as provided in subpart within this part.
 - (ii) Keep code sets for the current billing period and appeals periods still open to processing under the terms of the health plan's coverage.

As set forth in CFR 45 §162.900(b)(1)(2) and the Administrative Simplification Compliance Act (ASCA) and consistent with the (Purchaser's) extension filing, the (Provider) must be compliant with electronic Transactions and code set standards no later than October 16, 2003.

8. Access to PHI: At the direction of the **Covered Entity, Business Associate** agrees to provide access to any PHII held by **Business Associate** which the **Covered Entity** has determined to be part of the **Covered Entity's** Designated Record Set, in the time and manner designated by the **Covered Entity**. This access will be provided to the **Covered Entity** or, as directed by the **Covered Entity**, to an Individual, in order to meet the requirements under the Privacy Rule.

Amendment or Correction to PHI: At the direction of the **Covered Entity, Business Associate** agrees to amend or correct PHI held by **Business Associate** and which the **Covered Entity** has determined to be part of the **Covered Entity's** Designated Record Set, in the time and manner designated by the **Covered Entity**.

9. Reporting of Unauthorized Disclosures or Misuse of PHI: **Business Associate** shall report to the **Covered Entity** any use or disclosure of PHI not authorized by this Agreement or in writing by the **Covered Entity**. **Business Associate** shall make the report to the **Covered Entity's** Privacy Official not less than one (1) business day after **Business Associate** learns of such use or disclosure.

Business Associate's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the PHI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what **Business Associate** has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action **Business Associate** has taken or shall take to prevent future similar unauthorized use or disclosure. **Business Associate** shall provide such other information, including a written report, as reasonably requested by the **Covered Entity's** Privacy Official, or his or her designee.

10. Mitigating Effect of Unauthorized Disclosures or Misuse of PHI. **Business Associate** agrees to mitigate, to the extent practicable, any harmful effect that is known to **Business Associate** of a misuse or unauthorized disclosure of PHI by **Business Associate** in violation of the requirements of this Agreement.

11. Tracking and Accounting of Disclosures: So that the **Covered Entity** may meet its accounting obligations under the Privacy Rule, **Business Associate** agrees to the following:

- a. Disclosure Tracking. Starting April 14, 2003, for each disclosure not excepted under subsection (b) below, **Business Associate** will record for each disclosure of PHI it makes to the **Covered Entity** or a third party of PHI that **Business Associate** creates or receives for or from the **Covered Entity**: (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom **Business Associate** made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure. For repetitive disclosures which **Business Associate** makes to the same person or entity, including the **Covered Entity**, for a single purpose, **Business Associate** may provide: (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures, and (iii) the date of the last of these repetitive disclosures. **Business Associate** will make this log of disclosure information available to the **Covered Entity** within five (5) business days of the **Covered Entity's** request.
- b. Exceptions from Disclosure Tracking. **Business Associate** need not record disclosure information or otherwise account for disclosures of PHI that meet each of the following conditions:
 - (i) the disclosures are permitted under this Agreement, or are expressly authorized by the **Covered Entity** in another writing; and,

- (ii) the disclosure is for one of the following purposes:
 1. the **Covered Entity's** Treatment, Payment, or Health Care Operations;
 2. in response to a request from the Individual who is the subject of the disclosed PHI, or to that Individual's Personal Representative;
 3. made to persons involved in that individual's health care or payment for health care;
 4. for notification for disaster relief purposes;
 5. for national security or intelligence purposes; or,
 6. to law enforcement officials or correctional institutions regarding inmates.
 - c. Disclosure Tracking Time Periods. **Business Associate** must have available for the **Covered Entity** the disclosure information required by this section for the six-year period preceding the **Covered Entity's** request for the disclosure information (except **Business Associate** need have no disclosure information for disclosures occurring before April 14, 2003).
12. Accounting to the **Covered Entity** and to Government Agencies. **Business Associate** shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or on behalf of, or created for, the **Covered Entity** available to the **Covered Entity**, or at the request of the **Covered Entity**, to the Secretary of the federal **Covered Entity** of Health and Human Services (HHS) or his/her designee, in a time and manner designated by the **Covered Entity** or the Secretary or his/her designee, for the purpose of determining the **Covered Entity's** compliance with the Privacy Rule. **Business Associate** shall promptly notify the **Covered Entity** of communications with HHS regarding PHI provided by or created by the **Covered Entity** and shall provide the **Covered Entity** with copies of any information **Business Associate** has made available to HHS under this provision.
13. Term and Termination:
 - a. In addition to the rights of the parties established by the underlying Agreement, if the **Covered Entity** reasonably determines in good faith that **Business Associate** has materially breached any of its obligations under this Agreement, the **Covered Entity**, in its sole discretion, shall have the right to:
 - (i) exercise any of its rights to reports, access and inspection under this Agreement; and/or
 - (ii) require **Business Associate** to submit to a plan of monitoring and reporting, as the **Covered Entity** may determine necessary to maintain compliance with this Agreement; and/or
 - (iii) provide **Business Associate** with a defined period to cure the breach; or
 - (iv) terminate the Agreement and associated contracts in accordance with statutes and applicable contract terms and conditions.
 - b. Before exercising any of these options, the **Covered Entity** shall provide written notice of preliminary determination to **Business Associate** describing the violation and the action it intends to take.
14. Return or Destruction of PHI: Upon termination, cancellation, expiration or other conclusion of the Agreement, **Business Associate** shall:
 - a. Return to the **Covered Entity** or, if return is not feasible, destroy all PHI and in whatever form or medium that **Business Associate** received or created on behalf of the **Covered Entity**. This provision shall also apply to all PHI that is in the possession of subcontractors or agents of **Business Associate**. In such case, **Business Associate** shall retain no copies of such information, including any compilations derived from and allowing identification of PHI. **Business Associate** shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty- (30) day period, **Business Associate** shall certify on oath in writing to the **Covered Entity** that such return or destruction has been completed.
 - b. If **Business Associate** believes that the return or destruction of PHI is not feasible, **Business Associate** shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, **Business Associate** shall extend the protections of this Agreement to PHI it receives or creates on behalf of the **Covered Entity**, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the information infeasible, for so long as **Business Associate** maintains the PHI.
15. Miscellaneous
 - a. Automatic Amendment: Upon the effective date of any amendment to the HIPAA rules, this Agreement shall automatically amend so that the obligations imposed on **Business Associate** remain in compliance with such regulations.
 - b. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the **Covered Entity** to comply with the HIPAA Rules.

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

Business Associate Signature:

Business (Agency) Name

Business Associate's Authorized Representative Signature
Name/Title:

Date: _____

Covered Entity Signature:

Covered Entity's Authorized Representative Signature
KCDHS Director or Division Director

Date: _____

