

HIPAA Business Associate Agreement

This HIPAA AGREEMENT (“Agreement”) is entered into the ____ day of _____, 2019 by and between The Children’s Hospital of Alabama (“Covered Entity”) and _____ (**Business Associate**). Each of the Covered Entity and Business Associate may be referenced in this Agreement as a “Party” and collectively as the “Parties.”

I. Definitions

Catch-all Definition:

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, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific Definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.
- (b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.
- (c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) HIPAA Breach Notification Rule. “HIPAA Breach Notification Rule” shall mean the federal breach notification regulations, as amended from time to time issued under HIPAA and set forth in 45 C.F.R. Parts 160 and 164 (Subparts A&C).
- (e) HITECH Act. “HITECH Act” shall mean subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. Sections 17921-17954, and all its implementing regulations, when and as each as effective and compliance is required.

II. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement **within five (5) days** of which it becomes aware, including breaches of unsecured

protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware (Refer to Notices Section);

(d) Business Associate agrees to immediately mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI where Business Associate is in violation of the requirements of this Agreement.

(e) Pursuant to this Agreement, Business Associate agrees to indemnify, defend, and hold harmless Covered Entity from and against any and all claims, actions, damages, losses, liabilities, fines, penalties, costs, and expenses (including without limitation costs of breach notifications, costs of credit monitoring reasonable attorneys' fees) arising out of the failure of Business Associate or Business Associate's agents or employees to comply with any breach of this Agreement, including without limitation failure to comply with applicable HIPAA Rules or applicable state and federal laws and regulations. Business Associate agrees to maintain, at its own cost and expense, insurance coverage as necessary and reasonable to insure itself and its employees and agents in connection with the performance of its duties and responsibilities under this Business Associate Agreement. The obligations of this Provision shall survive the termination of this Agreement.

(f) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements, in writing, that apply to the Business Associate with respect to such Protected Health Information, including, but not limited to the extent that subcontractors create, receive, maintain, or transmit Electronic Protected Health Information on behalf of Business Associate;

(g) Make available protected health information in a designated record set to the "Covered Entity" as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524. The Business associate within five (5) days will provide this information to the Covered Entity and send the individual's request to the Covered Entity to fulfill.

(h) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526. The Business Associate within five (5) days will provide this information to the Covered Entity and send the individual's request to the Covered Entity to fulfill.

(i) Maintain and 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. The Business Associate will forward the individual's request to the covered entity and provide the information to the Covered Entity in five (5) days.

(j) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(k) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

III. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose protected health information as necessary to perform services under the Contact. Business Associate is not authorized to de-identify in accordance with 45 CFR 164.514(a)-(c), PHI received by Business Associate by or on behalf of Covered Entity; nor is Business Associate authorized to use de-identified information received from Covered Entity for a purpose not authorized by this Agreement, except with the prior written consent of the Covered Entity

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.

(e) Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(f) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of the covered entity.

IV. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity. Notwithstanding, Business Associate is permitted to use or disclose protected health information for, and the agreement includes provisions for, data aggregation or management and administration and legal responsibilities of the business associate.

VI. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the date of the Contract and shall terminate on the termination of the Contract or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(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 Covered Entity.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information. Business Associate is obligated to obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

(e) Notices. Any notices required under this Agreement will be send in writing via certified mail; return receipt requested and also via electronic mail.

For Business Associate [Fully Complete ALL Fields]:

Contact Person 1:

Name: _____

Title: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

FAX: _____

Email: _____

Website URL: _____

Contact Person 2: (if applicable)

Name: _____

Title: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

FAX: _____

Email: _____

Website URL: _____

For Covered Entity:

Kathleen Street
Privacy Officer/Risk Manager
Risk Management Department
Children's of Alabama
1600 7th Avenue South
Birmingham, AL 35233
Phone: (205) 638-5959
Fax: (205) 638-2468
Email: Kathleen.Street@childrensAL.org
Website URL: www.childrensAL.org/

VII. 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.

(b) Amendment. The Parties agree to 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 law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(d) Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The Agreement may be executed and delivered by facsimile or other electronic signature or electronic means as if the original had been received.

IN WITNESS WHEREOF, the authorized representatives of the parties sign effective the date above.

BUSINESS ASSOCIATE

Name: _____

By: _____

Printed Name: _____

Title: _____

COVERED ENTITY

The Children's Hospital of Alabama

By: _____

Printed Name: Tom Shufflebarger

Title: Chief Operating Officer