

Business Associate Agreement (Compass Hospital Collaborator)

Hospital Name

State

Input full hospital name, do not use acronyms or abbreviation.

Date

Name of Organization

Address of Organization

This Business Associate Agreement ("Agreement"), dated and effective as of _____, (the "Effective Date"), is entered into by and between the Iowa Healthcare Collaborative ("Business Associate") located at 100 E. Grand Ave, Ste 360, Des Moines, IA 50309, and _____, located at

_____ ("Covered Entity").

WITNESSETH:

WHEREAS, the parties to this Agreement have entered into an arrangement under which the Business Associate provides certain services to the Covered Entity;

WHEREAS, the Covered Entity will or may disclose certain information to the Business Associate during the course of the Business Associate's provision of such services, some of which may constitute "protected health information" or "electronic protected health information," as those terms are defined in federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, specifically 45 C.F.R. Parts 160 and 164 (the "Privacy Rule" and "Security Rule") as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (collectively, "HIPAA");

WHEREAS, the Covered Entity will or may disclose certain information to the Business Associate during the course of the Business Associate's provision of such services, some of which may constitute "protected health information" or "electronic protected health information," as those terms are defined in federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, specifically 45 C.F.R. Parts 160 and 164 (the "Privacy Rule" and "Security Rule") as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (collectively, "HIPAA");

WHEREAS, both the Business Associate and the Covered Entity intend to comply with HIPAA in order to protect the privacy and to provide for the security of PHI and ePHI disclosed to or created by the Business Associate; and

WHEREAS, both the Business Associate and the Covered Entity wish to set forth the terms and the conditions pursuant to which PHI and ePHI received by or created by the Business Associate in the performance of services for the Covered Entity will be handled between themselves and with third parties in compliance with HIPAA.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions contained herein, and intending to be legally bound, the Business Associate and the Covered Entity agree as follows:

1. Definitions.

The following terms shall be defined as set forth below. Terms used, but not defined in this Section or any other part of this Agreement, shall have the same meaning as those terms in the Privacy Rule and Security Rule.

(a) For purposes of this Agreement, "Business Associate" shall include the named Business Associate hereinabove.

(b) For purposes of this Agreement, "Covered Entity" shall include the named Covered Entity hereinabove, as well as any other entity specifically identified in any joint notice of privacy practices utilized pursuant to the Privacy Rule.

(c) "Electronic Protected Health Information" or "ePHI" shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, limited to the information received or created by the Business Associate from or on behalf of the Covered Entity.

(d) "Individual" shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative of an Individual in accordance with 45 C.F.R. § 164.502(g).

(e) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information promulgated at 45 C.F.R. Part 160 and Part 164, Subparts A, D, and E, and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

(f) "Protected Health Information" or "PHI" shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, limited to the information received or created by the Business Associate from or on behalf of the Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use or disclosure of PHI shall apply equally to ePHI.

(g) "Required By Law" shall have the same meaning as that term is defined at 45 C.F.R. § 164.103.

(h) "Secretary" shall mean the Secretary of the Department of Health and Human Services, or his or her designee.

(i) "Security Breach" shall have the same meaning as the term "Breach" is defined at 45 C.F.R. § 164.402, and shall mean the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under the Privacy Rule and which compromises the security or privacy of the PHI or ePHI.

(j) "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 C.F.R. § 164.304.

(k) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information promulgated at 45 C.F.R. Part 160 and Part 164, Subpart C, and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

(l) "Unsecured PHI" shall mean PHI or ePHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued pursuant to § 13402 of the HITECH Act, as provided in 45 C.F.R. § 164.402.

2. Background of the Agreement.

The Business Associate and the Covered Entity have entered into a written agreement for services. In the performance of these services, the Covered Entity may disclose PHI to the Business Associate, who may then need to use or disclose such PHI on behalf of the Covered Entity. The Business Associate acknowledges that certain sections of HIPAA apply directly to the Business Associate as they apply to the Covered Entity. Both parties are committed to complying with HIPAA, and accordingly, have entered into this Agreement to set forth the terms and conditions of how such PHI shall be handled between the Business Associate, the Covered Entity, and third parties.

3. Permitted Uses and Disclosures by the Business Associate.

(a) Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI on behalf of the Covered Entity for purposes of providing the services described hereinabove and described in any written agreement between the parties, provided that such use or disclosure shall not violate HIPAA if done by the Covered Entity, including but not limited

to, the minimum necessary to accomplish the purpose of the use or disclosure. The Business Associate agrees to comply with the Secretary's guidance issued pursuant to the HITECH Act as to what constitutes minimum necessary.

(b) Except as otherwise limited in this Agreement, the 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.

(c) Except as otherwise limited in this Agreement, the Business Associate may disclose PHI to a third person for the proper management and administration of the Business Associate, provided that such disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and may only be used or further disclosed 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 becomes aware in which the confidentiality of the information has been the subject of a Security Breach.

(d) Except as otherwise limited in this Agreement, the Business Associate may use PHI to provide data aggregation services to the Covered Entity.

(e) The Business Associate may use PHI to report violations of law to appropriate federal and state authorities in accordance with 45 C.F.R. § 164.502(j)(1).

(f) The Business Associate may de-identify any and all PHI that it obtains from the Covered Entity, but only if such de-identification is accomplished in accordance with the requirements of 45 C.F.R. § 514(a) and (b).

(g) The Business Associate may use and disclose PHI only if each such use and disclosure is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e).

4. Obligations of the Business Associate.

(a) The Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) The Business Associate agrees to use appropriate safeguards to prevent disclosure of the PHI other than as provided for by this Agreement, and to implement administrative, physical, and technical safeguards as required by 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 in order to protect the confidentiality, integrity, and availability of PHI that the Business Associate receives, creates, maintains or transmits to the same extent as if the Business Associate were a Covered Entity. The Business Associate shall undertake such actions in a manner that is consistent with any guidance issued by the Secretary pursuant to the HITECH Act.

(c) The Business Associate agrees to report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement, including any Security Incident or Security Breach involving Unsecured PHI, within ten (10) business days of becoming aware of the unauthorized use or disclosure, Security Incident, or Security Breach. In the event of a Security Breach, this notice shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been accessed, acquired, used or disclosed during the Security Breach. The Business Associate agrees to cooperate with the Covered Entity in mitigating, to the extent practicable, any harmful effect that is known to exist as a result of such unauthorized use or disclosure of PHI, such Security Incident, or Security Breach. The Business Associate further agrees to cooperate with the Covered Entity in complying with all state and federal public notification requirements arising therefrom.

(d) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI 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 in this Agreement to the Business Associate with respect to such information, including but not limited to, the requirement that such agent or subcontractor implement reasonable and appropriate safeguards to protect such information.

(e) The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or at the request of the Covered Entity, to the Secretary, for purposes of determining the Covered Entity's and/or the Business Associate's compliance with HIPAA.

(f) The Covered Entity may elect to provide an Individual who requests an accounting of disclosures for his or her PHI such an accounting on behalf both it and the Business Associate, in which case the Business Associate agrees to provide to the Covered Entity, within thirty (30) days of receiving a written request from the Covered Entity, such information as would be required to permit the Covered Entity to properly respond to such a request for accounting in accordance with 45 C.F.R. § 164.528 and Section 13405 of the HITECH Act. Alternatively, the Covered Entity may elect to provide the Individual who requests the accounting with a list of all or some of its Business Associates, in which case the listed Business Associate shall provide an accounting of disclosures made by it within thirty (30) days of receiving a request made by an Individual directly to the Business Associate for such an accounting.

5. Obligations of the Covered Entity.

- (a) The Covered Entity shall notify the Business Associate of any limitations in the Notice of Privacy Practices maintained by the Covered Entity to the extent that such limitations may affect the Business Associate's use or disclosure of the PHI.
- (b) The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission granted by an Individual under 45 C.F.R. § 164.506 or § 164.508 to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.
- (c) The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- (d) The Covered Entity shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

6. Term.

The term of this Agreement shall be effective as of the Effective Date and shall remain in force and effect until terminated pursuant to Section 7 hereinbelow.

7. Termination.

- (a) Either party may terminate this Agreement upon material breach of this Agreement by the other party provided that the breaching party does not cure such breach within thirty (30) days of notice of the breach. If neither cure nor termination is feasible, the Covered Entity shall report the breach to the Secretary.
- (b) The Business Associate shall not be permitted to terminate this Agreement so long as the services of the Business Associate for and on behalf of the Covered Entity are ongoing; provided however, that either party may terminate this Agreement when all of the PHI received from, or created or received by the Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity, or if it is infeasible to return or destroy the PHI, the protections are extended to such information in accordance with the provisions of Section 7(c) and (d) hereinbelow.
- (c) Upon termination of this Agreement for any reason, the Business Associate shall return or destroy all PHI received from, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate and the Business Associate shall so notify its subcontractors or agents of these obligations. The Business Associate and its subcontractors or agents shall retain no copies of the PHI.
- (d) In the event that the Business Associate determines that returning or destroying the PHI is not feasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or destruction of such information infeasible. Upon such notification, the Business Associate shall 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 or destruction infeasible, for so long as the Business Associate maintains such PHI. In the event that it is infeasible for the Business Associate to obtain from a subcontractor or agent of the Business Associate any PHI in the possession of the subcontractor or agent, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction of such information from the subcontractor or agent infeasible. Upon such notification, the Business Associate shall require the subcontractor or agent to 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 or destruction infeasible, for so long as the subcontractor or agent maintains such PHI.
- (e) This Agreement will automatically terminate without any further action of the parties upon the termination of the services provided by the Business Associate to or on behalf of the Covered Entity.

8. Regulatory References.

Any reference in this Agreement to a provision of the Privacy Rule or Security Rule shall mean the section as in effect or as amended.

9. Survival.

The respective rights and obligations of the Business Associate under Section 7(c) and (d) of this Agreement shall survive the termination of this Agreement.

10. No Third Party Beneficiaries.

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties, and their respective successors and assigns, any rights, remedies, obligations, or liabilities whatsoever.

11. Amendment.

The parties agree to take such action as is necessary to amend this Agreement from time to time in order for the Covered Entity to comply with the requirements of HIPAA, as may be amended from time to time. No amendment to this Agreement shall be effective until reduced to writing and duly signed by the authorized representatives of the parties.

12. Non-Waiver.

A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.

13. Assignment.

Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. Any assignment not in accordance with this Section shall be null and void.

14. Nature of Agreement.

Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that their relationship shall be that of independent contractors.

15. Entire Agreement.

This Agreement constitutes the entire agreement between the Business Associate and the Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

16. Severability.

Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

17. Notices.

All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing, and shall be effective upon receipt. Such notice may be made by personal delivery, by facsimile or electronic mail with return facsimile or electronic mail acknowledging receipt, by overnight delivery service with proof of delivery, or by certified or registered United States mail, return receipt requested. All such communications except service of process shall be sent to the address set forth under the applicable signature block below or as amended by notice pursuant to this Section 17. Neither party shall refuse delivery of any notice hereunder.

18. Interpretation.

Any ambiguity in this Agreement shall be resolved to permit the parties to comply with HIPAA as may be amended from time to time. The provisions of this Agreement shall prevail over any provision of any other agreement between the Business Associate and the Covered Entity that may conflict with or be inconsistent with any provision in this Agreement.

19. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have duly executed this Agreement to be effective as of the date first above written.

Covered Entity

Covered Entity Signature

Name

Title

Email

Date

Address

Business Associate

Iowa Healthcare Collaborative

To be completed by Iowa Healthcare Collaborative.

By _____

Name _____

Title _____

Address

Date _____

100 E Grand Avenue, Suite 360
Des Moines, IA 50309