

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between Snohomish Health District (“Covered Entity”) and Community Health Center of Snohomish County (“Business Associate”) as of June 1, 2019 (“Effective Date”).

RECITALS

WHEREAS, the parties have entered into one or more agreements (the “Underlying Agreement”) whereby Business Associate provides services to Covered Entity, and Business Associate receives, has access to or creates Protected Health Information (“PHI”) in order to provide those services and such ‘underlying agreement(s)’ may incorporate by reference this Agreement;

WHEREAS, this PHI is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder, including the Standards for Privacy and Security of individually identifiable Health Information codified at 45 Code of Federal Regulations Parts 160, 162 and 164 (“Privacy and Security Regulations”);

WHEREAS, the Privacy Regulations require covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as it relates to this Agreement as follows:

I. DEFINITIONS

- 1.1 “Designated Record Set” shall mean a group of records maintained by or for the Covered Entity that is (i) the medical records and billing records about individuals maintained by or for the Covered Entity; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered Entity to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collect, used, or disseminated by or for the Covered Entity.
- 1.2 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health information outside Business Associate’s internal operations or to other than its employees.
- 1.3 “Protected Health Information” or “PHI” means information, including demographic information, that (i) relates to the past, present or future physical or mental health or

- condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity.
- 1.4 “Electronic Protected Health Information” or “EPHI” means the subset of PHI that is transmitted by electronic media or maintained in electronic media.
- 1.5 “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations of an information system.
- 1.6 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such information within Business Associate’s internal operations.
- 1.7 “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and the regulations promulgated thereunder by the Secretary.
- 1.8 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those in 45 CFR 160, 162, and 164.

II. OBLIGATIONS OF BUSINESS ASSOCIATE

- 2.1 Permitted Uses and Disclosures of PHI. Except as otherwise limited in this Agreement, Business Associate may Use and Disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes set forth in the Underlying Agreements, if such use or disclosure of PHI would not violate the Privacy and Security Regulations if done by the Covered Entity. Business Associate agrees not to use or further disclose PHI other than as permitted or required by the Underlying Agreements, this Agreement, or as required by law.
- 2.2 Adequate Safeguards for PHI. Business Associate warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Agreement and Underlying Agreements.
- 2.3 Adequate Safeguards for EPHI. Business Associate warrants that it shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any EPHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate further warrants that it shall comply the HIPAA Security Regulations, where applicable, with respect to EPHI to prevent the use or disclosure of EPHI other than as provided for by this Agreement.
- 2.4 Knowledge of HIPAA Regulations. Business Associate agrees to review and understand the HIPAA Privacy and Security Regulations as they apply to Business Associate, and to comply with the applicable requirements of HIPAA.

- 2.5 Reporting Non-permitted Use or Disclosure. Business Associate shall immediately in writing notify Covered Entity of each Use or Disclosure of which it becomes aware that is made by Business Associate, its employees, representatives, agents, or subcontractors that is not specifically permitted by this Agreement. In addition, Business Associate shall report to the Covered Entity any Security of which it becomes aware as follows: a) reports of successful unauthorized access shall be made immediately; and b) reports of attempted unauthorized access shall be made in a reasonable time and manner considering the nature of the information to be reported.

Business Associate shall report to Covered Entity a Breach of Unsecured Protected Health Information without unreasonable delay, but not later than five (5) days, following Business Associate's discovery of such Breach, where such report will include the identification of each individual whose Unsecured PHI has been or is reasonable believed to have been breached and other information as requested by Covered Entity.

- 2.6 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.
- 2.7 Access to and Amendment of PHI. Within ten (10) days of receiving a request from the Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall: (a) make the PHI specified by Covered Entity available to the individual(s) identified by Covered Entity as being entitled to access and copy that PHI, and (b) make PHI available to Covered Entity for the purpose of amendment and incorporating such amendments into the PHI. Business Associate shall provide such access and incorporate such amendments within the time and in the manner specified by Covered Entity.
- 2.8 Accounting of Disclosures. Within ten (10) days of receiving a request from the Covered Entity, Business Associate shall provide to Covered Entity an accounting of each Disclosure of PHI made by Business Associate or its employees, agents, representatives or subcontractors. Business Associate shall provide to Covered Entity such information in Business Associate's possession and required for Covered Entity to make the accounting required by 45 CFR Section 164.528 and Section 13405© of Title XII, Subtitle D of the HITECH Act, codified at 42 U.S.C. §17932.

Any accounting provided by Business Associate under this Section 2.8 shall include:

(a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could

require an accounting under this Section 2.8, Business Associate shall document the information specified in (a) through (d), above, and shall securely retain this documentation for six (6) years from the Disclosure date.

- 2.9 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that creates, receives, maintains or transmits PHI on behalf of Business Associate to execute a written agreement obligating the agent or subcontractor to comply with terms that are substantially similar to the terms of this Agreement and to agree to the restrictions and conditions substantially similar to those that apply to Business Associate with respect to the PHI.
- 2.10 Agreement to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, and to promptly communicate to Covered Entity any actions taken pursuant to this paragraph.
- 2.11 Compliance with Covered Entity Obligations. To the extent Business Associate carries out Covered Entity's obligations under the Privacy and Security Regulations, Business Associate shall comply with the requirements of such regulations that apply to Covered Entity in the performance of such obligations.
- 2.12 HITECH Compliance. Business Associate shall comply with the requirements of HITECH, codified at 42 U.S.C. §17921-17954, which are applicable to business associates, and shall comply with all regulations issued by the Department of Health and Human Services to implement HITECH as of the date by which business associates are required to comply.

III. TERM AND TERMINATION

- 3.1 Term and Termination. The term of this Agreement shall commence on the Effective Date and shall terminate when all of the PHI in the possession of Business Associate or its subcontractors or agents is returned, or, at the direction of Covered Entity, is destroyed in accordance with Section 3.2. This Agreement may be terminated by Covered Entity immediately and without penalty upon written notice by Covered Entity to Business Associate if Covered Entity determines, in its sole discretion, that Business Associate has violated any material term of the Agreement, as amended. Business Associate's obligations under Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 3.2 and 4.2 of this Agreement shall survive the termination or expiration of the Agreement.
- 3.2 Disposition of PHI upon Termination or Expiration. Upon termination or expiration of this Agreement, Business Associate shall either return or destroy, in Covered Entity's sole discretion and in accordance with any instructions by Covered Entity, all PHI in the possession or control of Business Associate or its agents and subcontractors. However, if Covered Entity determines that neither return nor destruction of PHI is feasible, Business Associate may retain PHI provided that Business Associate:

(a) continues to comply with the provisions of this Agreement for as long as it retains PHI, and (b) limits further Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI infeasible.

IV. GENERAL TERMS

- 4.1 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.
- 4.2 Indemnification. Business Associate will indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach or non-fulfillment of any undertaking on the part of Business Associate under this Agreement; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with Business Associate obligations under this Agreement. Covered Entity will indemnify, hold harmless and defend Business Associate from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach or non-fulfillment of any undertaking on the part of Covered Entity under this Agreement; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with Covered Entity's obligations under this Agreement. It is recognized that the parties to this Agreement have 'underlying agreement(s)' which provide their own indemnification provisions for the sake of this 'underlying agreement (s)'.
- 4.3 Insurance. Business Associate and Covered Entity shall obtain and maintain during the term of this Agreement Cyber liability insurance covering claims based on a violation of the Privacy and Security Regulations or any applicable state law or regulation concerning the privacy of patient information and claims based on its obligations pursuant to this Section in an amount not less than \$2,000,000 per claim. Such insurance shall name Covered Entity as an additional named insured. A copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity upon written request. It is recognized that the parties to this Agreement have 'underlying agreement(s)' which may establish their own obligations for insurance coverage to be met beyond this Agreement.
- 4.4 No Property Interest. Except as specifically provided in this Agreement, Business Associate agrees that it acquires no title or rights to the PHI including any de-identified information, as a result of providing services to Covered Entity. All rights, interest, and title in and to Covered Entity's data, including all PHI, shall remain vested in Covered Entity at all times.
- 4.5 Independent Contractor. Business Associate and Covered Entity are independent contractors, and nothing in the Underlying Agreements or this Agreement shall be deemed to create an agency, partnership, or joint venture between the parties. Neither party shall represent itself as the agent or legal representative of the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date stated above.

BUSINESS ASSOCIATE:

COVERED ENTITY:

**COMMUNITY HEALTH CENTER OF
SNOHOMISH COUNTY**

SNOHOMISH HEALTH DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____