

## VIRTUAL VISIT SOFTWARE USAGE AGREEMENT

THIS CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between Via Christi Hospital Wichita, Inc., hereinafter referred to as "VCH," and Sedgwick County, Kansas, on behalf of its COMCARE hereinafter referred to as "County" or "COMCARE."

WITNESSETH:

WHEREAS, VCH operates an acute care general hospital in Wichita, Kansas; and

WHEREAS, County regularly provides state hospitalization assessment services for patients at VCH; and

WHEREAS, VCH and County desire to develop a cooperative arrangement utilizing VCH's Virtual Visit software to have the ability to remotely perform mental health screenings at VCH facilities; and

NOW, THEREFORE, and in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. Purpose. VCH desires to provide COMCARE access to its Virtual Visit software to facilitate timely assessments for patients at VCH who may require local inpatient treatment or treatment at a state mental health hospital.

2. Contract Term and Termination. The term of this Contract shall be for a period commencing on the day first written above and ending December 31, 2013. This agreement will then automatically renew for successive one (1) year terms unless either party gives sixty (60) days written notice of intent to not renew to the other party prior to the end of the then current term. This Contract may be terminated immediately upon mutual agreement of the parties.

3. County's Responsibilities. County agrees to supply clinicians, either through employees or contracted providers, to provide mental health screens for patients at VCH. County agrees to fulfill the responsibilities, duties and professional services required of it in a careful, prudent and competent manner consistent with state requirements. County expressly agrees to the following:

- a. To notify VCH at the time a mental health screen or inpatient hospital screen is requested whether they will utilize the Virtual Visit software or provide an in-person assessment.
  - b. County agrees not to utilize the software in an unlawful way or for an unlawful or illegitimate purpose.
4. VCH's Responsibilities. At no cost to County, VCH will allow County clinicians access to and training on its Virtual Visit software to allow mental health screens to be conducted

via televideo (i.e. interactive audio and video communication permitting real-time communication between patient at VCH and County clinician at a remote site). VCH expressly understands and agrees to the following:

- a. To notify County immediately of any changes to the arrangements between VCH and its Virtual Visit software vendor.
- b. To provide training to County staff on usage of Virtual Visit software.
- c. To facilitate the patient's Virtual Visit sign on and access at VCH facilities for those requiring mental health assessments.
- d. Patients requiring state hospital assessments through this cooperative agreement may not have the capacity to provide full consent to software end-user terms or conditions and their ability to access the system shall not be restricted by this limitation, unless prohibited by law.
- e. No data, either identifiable or non-identifiable in format, obtained through this arrangement may be aggregated or disclosed to third parties for any reason including public health, commercial or research.

5. Security of Data. VCH is responsible for ensuring that all data being transmitted via Virtual Visit software is secure in regard to physical safety and privacy protection. In the event of a breach that could result in the disclosure of PHI or user identifying information related to this agreement, VCH will notify County of a known breach in accordance with the terms and conditions set out in the Business Associate Agreement set out in Appendix B of this agreement. VCH is responsible for following all appropriate procedures and protocols to communicate and remediate such a breach. VCH expressly agrees that no recordings (audio or video) will be made of assessments provided by County via Virtual Visit.

6. Data Storage. It is County's expectation that physical storage of all data related to County's usage of the software be maintained within the geographic boundaries of the United States of America. Additionally, VCH expressly agrees to disclose to County any subcontractors utilized for data storage related to this arrangement and all terms or conditions with regard to data storage.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Kansas and the laws of the United States applicable therein.

8. Professional Liability Insurance and Indemnification. County shall insure County clinicians maintain professional liability insurance as required by the laws of the State of Kansas. County agrees to indemnify and hold harmless VCH from any claim, expense of liability arising out of, or in connection with, negligence on the part of County or on the part of any person subject to its control or supervision. VCH hereby agrees to indemnify and hold harmless County, its agents and employees from any claim or liability arising by virtue of any alleged

negligence or malpractice on the part of VCH or its subcontractors. Upon request, a current certificate of insurance shall be furnished to VCH reflecting County's self-insured status for general liability and a certificate of insurance for professional liability coverage.

9. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

10. Terms Binding. The terms and provisions of this Contract shall be binding upon and inure to the benefit of the parties herein, their heirs, executors, legatees, trustees, and administrators, successors and assigns.

11. Entire Contract and Provision. This Contract contains the entire agreement and understanding of the parties and supersedes all oral and written representations and statements between the parties. This Contract may be amended only in writing, signed by both parties.

12. Severability. If any provision of this Contract is declared illegal or unenforceable, the other provision of this Contract shall remain in full force and effect.

13. Incorporation of Appendices. Appendix A – General Contractual Provisions and Appendix B - Business Associate Agreement are attached hereto and made a part hereof as if fully set out herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first above written.

SEDGWICK COUNTY, KANSAS

ATTEST:

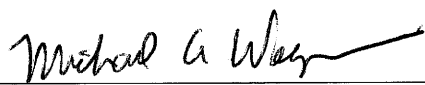
\_\_\_\_\_  
Kelly B. Arnold, County Clerk

\_\_\_\_\_  
James B. Skelton, Chairman

APPROVED AS TO FORM:

VIA CHRISTI HOSPITALS, INC

  
\_\_\_\_\_  
Jennifer Magaña, Deputy County Counselor

  
\_\_\_\_\_  
Michael A. Wegner, Senior VP of Finance  
& CFO

# APPENDIX A

## GENERAL CONTRACTUAL PROVISIONS

### 1. AUTHORITY TO CONTRACT.

A. Affirmation of Legal Authority. Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

B. Required Documentation. Domestic (Kansas) corporations shall 1) furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State; and 2) a copy of the Corporation Resolution evidencing the authority to sign the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary.

### 2. RELATIONSHIP of PARTIES.

It is agreed that the legal relationship between Provider and County is of a contractual nature. Both parties assert and believe that Provider is acting as an independent contractor in providing the services and performing the duties required by County hereunder. Provider is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Provider, and employees of Provider, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Provider, and employees of Provider, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Provider.

### 3. PERSONNEL.

A. Qualified Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any other contractual relationship with County. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this contract.

B. Minimum Wages. Contractor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

C. Employee Conflict of Interest. Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

D. Contractor's Safeguard. The parties to this agreement recognize that entities or persons providing government-funded services to the public are the subject of public scrutiny. Consequently, by entering into this agreement Contractor assumes an affirmative and ongoing duty during the pendency of this contract to maintain compliance with requirements set forth in subsection E below. Such compliance requires the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this agreement, or administering the funds conveyed under this agreement.

E. Participant Safeguard. Contractor certifies that:

1) Persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, crime of moral turpitude or crime against another person during the ten-year period concluding on the date of execution of this contract or during the pendency of this contract, or any individual who is known by provider to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to administer this contract or handle the funds conveyed under this contract;

2) Persons with convictions for crimes against persons, for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, or any individual who is known by provider to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to provide services or interact in any way with persons served pursuant to this contract; and

3) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the five-year period concluding on the date of execution of this contract, or during the pendency of this contract, shall not be permitted to operate a vehicle in which a person served pursuant to this contract is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

4) Any question concerning the interpretation of this subsection E and/or its application to an individual shall be referred to the Director of the Agency administering the funding of this agreement for the County. The Director's decision shall be final for purposes of compliance with this contract. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution. Provider shall not be held accountable for cases in which diversions or deferred judgments are not reflected in an individual's criminal record, or for expunged convictions, if Provider would have no other reasonable way of knowing of these acts.

F. It is understood that this contract may be revoked at the discretion of the County if Contractor is in violation of Subsection E.

No penalty shall be assessed to the County for revocation of this agreement in the event of a breach of any portion of Appendix A, Section 3.

#### 4. PROHIBITION OF CONFLICTS OF INTEREST.

A. Interest of Public Officials and Others. No officer or employee of County, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this contract which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of County or any member of its governing body or other public official have any interest, direct or indirect, in this contract or the proceeds thereof.

B. Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.

C. Employee Conflicts. Situations in which 1) an employee of the County shall also be an employee of Contractor at time of agreement, 2) an employee of Contractor seeks additional/alternate employment with County during pendency of agreement, or 3) an employee of County seeks additional/alternate employment with Contractor during pendency of agreement, shall require written notice to the County at the addresses listed in Section Twenty (20) below. The County shall make every effort to assure that such employees do not have any authority to approve 1) grant funds, 2) agreements, or 3) affiliate status to the Contractor or Contractor's competitors.

D. Notice to Bidders. Requests for proposal or invitations for bid issued by Contractor to implement this contract will provide notice to prospective bidders that County's conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFP's for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

#### 5. FUNDING.

A. Reprogramming of Funds. It is understood and agreed that in the event the amount of funds County actually receives from the County mill levy is less than anticipated, County may decrease the total compensation and reimbursement to be paid hereunder.

#### 6. RECORDS, REPORTS AND INSPECTION.

A. Maintenance of Records. Except as otherwise authorized by County, Contractor shall retain such documentation for a period of three (3) years after receipt of the final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

C. Reports. During the term of this contract, Contractor shall furnish to County, in such form as County may require, such statements, records, reports, data and information as County requests pertaining to matters covered by this contract.

D. Audit. Contractor shall provide for an annual independent audit of its financial records and shall provide a copy of said audit to County, upon request. If not otherwise required by law to perform an audit and upon approval by

County, Contractor may provide a copy of a financial balance sheet developed by a reputable accountant/accounting firm instead of a formal audit.

E. Availability of Records. Contractor agrees to make any and all of its records, books, papers, documents and data available to County, or the authorized representative of a State agency with statutory oversight authority, for the purpose of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies and transcriptions at any time during the terms of this contract and for a three (3) year period following final payment under the terms of this contract.

F. Contractor's Purchasing Procedure. Contractor certifies that it does not practice any form of discrimination based on race, ethnic origin, gender or religion or disability in its purchasing procedures. Contractor agrees to make available a written description of its purchasing procedures if requested by County.

G. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

## 7. PARTICIPANT INPUT.

Contractor shall provide persons receiving services funded pursuant to this contract with an opportunity to assess and evaluate the program at least once during the contract term, unless such requirements are more specifically addressed elsewhere in this agreement or by statute.

## 8. LICENSES AND PERMITS.

Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this contract. Contractor shall notify County immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by County, in its discretion.

## 9. INSURANCE REQUIREMENTS

Contractor shall annually provide a certificate of insurance to verify liability insurance. Sedgwick County shall be listed as an additional insured on the general liability policy, and the certificate should provide for at least a 10 day written notice of cancellation. If Contractor transports clients during services provided for under this agreement, evidence of auto insurance on the Certificate is required. Contractor shall also annually provide evidence of Professional Liability insurance, as appropriate. The above insurance requirements apply to all commercial vendors providing services for Sedgwick County.

## 10. EPA APPROVED BUILDING.

Contractor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the contract is under consideration for such listing by the EPA.

## 11. HANDICAPPED ACCESSIBILITY.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements of the Americans With Disabilities Act (ADA) which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

## 12. ASSIGNMENT.

Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

## 13. PUBLICATION OF CONTRACT RESULTS.

A. Copyright. If this contract results in a book or other material which may be copyrighted, the author is free to copyright the work. County reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material which can be copyrighted.

B. Documentation of originality or source. All published material and written reports submitted under this contract or in conjunction with the third party agreement under this contract will be originally developed material unless specifically provided for otherwise. Material not originally developed included in reports will have the source identified either in the body of the report or in a footnote, whether the material is in a verbatim or extensive paraphrase format. All published material and written reports shall give notice that funds were provided by a grant from County.

14. COMPLIANCE WITH APPLICABLE LAWS, SERVICE STANDARDS AND REQUIRED PROCEDURES. A. Service Standards and Procedures. Contractor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified in Appendix B which covers the specific purpose, goals and objectives of this agreement.

B. Governing Law. This contract shall be interpreted under and governed by the laws of the State of Kansas.

C. Compliance With Law. Contractor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this agreement.

#### 15. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

In carrying out this contract, Contractor shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 *et seq.*

A. Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Contractor fails to comply the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.

D. If Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.

E. Contractor shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

#### 16. TERMINATION OF CONTRACT.

A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

17. NOTIFICATION.

Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County: Comprehensive Community Care Of Sedgwick County  
Attn: Marilyn Cook, Director  
635 N. Main,  
Wichita, KS 67203-3752  
PHONE (316) 660-7600  
FAX (316) 660-7510

Sedgwick County Legal Department  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, KS 67203-3790

Contractor: Via Christi Hospitals, Inc.  
Attn: Susan Bumstead  
929 N. St. Francis  
Wichita, KS 67214

18. Amendments to Agreement.

To provide necessary flexibility for the most effective execution of this contract, whenever both County and Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract. Any change which affects contract objectives must be approved by COMCARE and the Sedgwick County Board of Commissioners.

19. Certificate of Tax Clearance. Annually Contractor shall provide County with a certificate of tax clearance from the State of Kansas certifying Contractor has paid all state taxes. The statement of tax clearance must be provided before contract renewal/initiation and be dated no more than 30 days prior to beginning date of the contract term.

20. Debarment/Suspension

Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the Excluded Parties List System (EPLS) shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been placed on the Excluded Parties List System (EPLS) and any federal funding received or to be received by Sedgwick

County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the EPLS, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under EPLS and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein.

## APPENDIX B

### HIPAA PRIVACY AND SECURITY RULE

#### BUSINESS ASSOCIATE ADDENDUM OR ATTACHMENT

WITNESSETH

WHEREAS, the Parties have established a business relationship in which Via Christi Hospitals, Inc. (previously referred to as "VCH" but hereinafter referred to as "Business Associate"), acting for or on behalf of the Sedgwick County Board of County Commissioners (referred to as "County" previously, but hereinafter referred to as "Covered Entity") but not as a health care provider, receives Personal Health Information as defined by the Health Insurance Portability and Accountability Act ("the Act"); and

WHEREAS, the Parties desire to comply with the requirements of the Act's Privacy and Security Rule as further set out below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the parties hereto agree to the following provisions:

#### DEFINITIONS

1.1 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, and in reference to the party to this agreement, shall mean Sedgwick County.

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

#### OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

**Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 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 this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement 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, as further provided for in Par. 12.1, *et seq.*;

2.4 mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

2.5 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 that apply to the Business Associate with respect to such information;

2.6 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;

2.7 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;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 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.

### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only Use or Disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purposes of the contractual relationship, if such Use or Disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the Minimum Necessary policies and procedures of the Covered Entity.

### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information for the proper management and administration of the

Business Associate or to carry out the contractual or legal responsibilities of the Business Associate.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 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.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

5.1 Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

5.3 Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information 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 Protected Health Information.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 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. If necessary in order to meet the Business

Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

## **TERM**

7.1 *Term.* The Agreement shall be effective as of date of execution of the Agreement by the parties, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, has been returned to Covered Entity or, at Covered Entity's option, is destroyed, or, if it is infeasible to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, Business Associate agrees to indemnify, defend and hold harmless the Covered Entity, including any employees, agents, or Subcontractors against any actual and direct losses suffered by the Indemnified Party(ies) and all liability to third parties arising out of or in connection with any breach of this Agreement or from any negligent or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Rules, by the Business Associate or its employees, directors, officers, Subcontractors, agents, or other members of its workforce. Accordingly, upon demand, the Business Associate shall reimburse the Indemnified Party(ies) for any and all actual expenses (including reasonable attorney's fees) which may be imposed upon any Indemnified Party(ies) by reason of any suit, claim, action, proceeding or demand by any third party resulting from the Business Associate's failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 Business Associate agrees, to the extent any Protected Health Information created, received, maintained or transmitted by or in electronic media, also referred to as electronic protected health care information, as defined by 45 CFR § 160.103, that it will only create, maintain or transmit such information with appropriate safeguards in place.

Business Associate shall therefore: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health care information; ensure that any agent, including Subcontractors, to whom it provides such information shall agree to also implement reasonable and appropriate safeguards to protect the information; and report to the Covered Entity any Security Incident, as that term is defined by 45 CFR § 164.304, of which it becomes aware.

## **TERMINATION**

10.1 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.

## **EFFECT OF TERMINATION**

11.1 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.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

continue to 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 the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information 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.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

### **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it shall, following the discovery of a Breach of such information, notify the Covered Entity of such Breach. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, Used, accessed, acquired, or Disclosed during such Breach. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the Individual under 45 C.F.R. § 164.404(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 For purposes of this section, a Breach shall be treated as discovered by the Business Associate as of the first day on which such Breach is known to such Business Associate (including any person, other than the Individual committing the breach, that is an employee, officer, or other agent of such associate) or should reasonably have been known to such Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach by the Business Associate involved in the case of a notification required under section 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 If a law enforcement official determines that a notification or notice required under this section would impede a criminal investigation or cause damage to national security, such notification or notice shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a Disclosure covered under such section.

If a law enforcement official states to the Business Associate that any notification or notice would impede a criminal investigation or cause damage to national security, the Business Associate shall:

- (a) If the statement is in writing and specifies the time for which a delay is required, delay such notification or notice for the time period specified by the official; or
- (b) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification or notice temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in (a) is submitted during that time.

### **PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity has obtained from the Individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
- (c) The purpose of the exchange is for the treatment of the Individual, subject to any regulation that the Secretary may promulgate to prevent Protected Health Information from inappropriate access, Use, or Disclosure.
- (d) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.
- (e) The purpose of the exchange is for remuneration that is provided by the Covered Entity to the Business Associate for activities involving the exchange of Protected Health Information that the Business Associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to the Agreement.
- (f) The purpose of the exchange is to provide an Individual with a copy of the Individual's Protected Health Information pursuant to section 164.524 of title 45, Code of Federal Regulations.
- (g) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (a) through (f).