

## **BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date"), by and between \_\_\_\_\_ ("Covered Entity") and Lake County ("Business Associate"), (collectively, the "Parties").

WHEREAS, Covered Entity is a "Covered Entity" as that term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended ("HIPAA"), and the Privacy, Security, Breach, Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164 (jointly "HIPAA Rules") promulgated thereunder;

WHEREAS, Business Associate is a "Business Associate" as that term is defined in the HIPAA Rules, and may access, use, create, maintain, transmit, receive and/or disclose Protected Health Information ("PHI") of the Covered Entity;

WHEREAS, pursuant to the HIPAA Rules, the Business Associate must agree in writing to certain mandatory provisions and must comply with HIPAA and the HIPAA Rules.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **ARTICLE I DEFINITIONS**

1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

1.2 All PHI that is created or received by the Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created, maintained, accessed, transmitted, used, disclosed, or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

### **ARTICLE II PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

2.1. Business Associate may use, access, create, maintain, transmit, receive and disclose PHI as reasonably required or contemplated in connection with the performance of services provided to or on behalf of Covered Entity as specified in a separate agreement between the parties, excluding the use or further disclosure of such PHI in a manner that would violate the requirements of the HIPAA Privacy Rule, if done by the Covered Entity.

- 2.2 Business Associate may use and disclose such PHI for the proper management and administration or to carry out the legal responsibilities of Business Associate.
- 2.3 Business Associate agrees it will not use or further disclose PHI other than as permitted or required by this Agreement or as required by applicable law.
- 2.4 Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.
- 2.5 Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware.
- 2.6 Business Associate agrees to ensure that any subcontractors that create, receive, maintain, use, disclose, access or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. Business Associate agrees to satisfy this requirement by implementing a written agreement with each subcontractor setting forth the terms and conditions required under this Agreement.
- 2.7 In the event Business Associate maintains a Designated Record Set, within ten (10) days of a Covered Entity's request for access to PHI in a Designated Record Set held by Business Associate, Business Associate agrees to provide reasonable access (including inspection and obtaining copies to such Covered Entity in order to meet the requirements of the HIPAA Privacy Rule.
- 2.8 In the event Business Associate maintains a Designated Record Set, it will, at the request of the Covered Entity, make available to Covered Entity within ten (10) days the PHI in a Designated Record Set held by Business Associate for amendment and immediately incorporate any amendments to such information in accordance with the HIPAA Privacy Rule.
- 2.9 To the extent feasible, Business Associate will maintain and, within ten (10) days following the request of Covered Entity, make available to Covered Entity the information possible to assist Covered Entity in providing an accounting of disclosures in accordance with the HIPAA Privacy Rule. Business Associate does not currently possess the technology at this time to provide Covered Entity with an accounting of disclosures.
- 2.10 In the event that Business Associate receives a request from an Individual or patient for Access, Amendment or Accounting purposes as described in Sections 2.7 – 2.9 above, Business Associate will immediately notify Covered Entity in writing of said request and provide reasonable assistance to Covered Entity in responding to said request in a timely fashion so as to permit Covered Entity to respond to the request within the time limits imposed under the HIPAA Rules and in any event, no later than ten (10) days following the request. Covered Entity will have sole and exclusive authority in overseeing the response to an Individual's or patient's request and

Business Associate will not provide any response to an Individual or patient without first notifying Covered Entity in writing and complying with the reasonable instructions from Covered Entity.

2.11. Business Associate will make its internal practices, books, and records relating to the use and disclosure of such PHI available to the Secretary of the U.S. Department of Health & Human Services (“HHS”) for purposes of determining the Covered Entity’s and Business Associate’s compliance with HIPAA and the HIPAA Rules. In the event that Business Associate receives a request from HHS or any other state or federal agency relating to PHI, Business Associate will provide immediate notice to Covered Entity and grants Covered Entity authority to direct the response to any such request to the extent it relates to PHI of Covered Entity.

2.12. Business Associate will, at termination of this Agreement, return or destroy all PHI that Business Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protections of this Agreement to PHI and limit further uses and disclosures to those purposes that make the return or destruction of such PHI infeasible.

### **ARTICLE III RESPONSIBILITIES OF BUSINESS ASSOCIATE**

3.1. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required under the HIPAA Security Rule.

3.2. Business Associate will immediately report to Covered Entity any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI or interference with system operations in an Information System affecting such electronic PHI of which Business Associate becomes aware.

3.3. Business Associate will ensure that any agent, including a subcontractor, to whom it provides such electronic PHI enters into a written agreement with Business Associate and agrees to implement reasonable and appropriate safeguards to the same extent required by Business Associate under this Agreement.

3.4. Breach Notification.

3.4.1. Business Associate will report to Covered Entity in writing any acquisition, access, use or disclosure of PHI in violation of HIPAA which could be or is considered a Breach of Unsecured PHI within ten (10) days of discovery of the Breach.

3.4.2. Business Associate will fully cooperate with Covered Entity to investigate, mitigate, assess any risk, resolve, and notify any Individuals, media, and HHS as determined

necessary by Covered Entity. Covered Entity will have sole discretion in addressing and responding to any purported Breach.

3.5. To the extent Business Associate agrees to carry out one or more of Covered Entity's obligation(s) under the HIPAA Rules, Business Associate will comply with such requirements of the HIPAA Rules that apply to Covered Entity in the performance of such obligation(s).

3.6. Business Associate relies upon Covered Entity to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures and Business Associate will rely upon Covered Entity to use or disclose the minimum necessary PHI when carrying out its obligations to provide the Services.

3.7. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of 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.

3.8. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate or Covered Entity related to the use, access, disclosure, transmission, reception, creation, or maintenance of PHI by Business Associate.

#### **ARTICLE IV RESPONSIBILITIES OF COVERED ENTITY**

4.1. Covered Entity will notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

4.2. Covered Entity will notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under the HIPAA Privacy Rule, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.3. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except for use or disclosure of PHI for management and administration or to carry out legal responsibilities of Business Associate. Covered Entity acknowledges that Business Associate is relying upon Covered Entity to use or disclose only the minimum necessary information.

## **ARTICLE V TERM AND TERMINATION**

5.1. Term. The Term of this Agreement shall become effective on the Effective Date and shall continue for so long as Business Associate creates, uses, discloses, maintains, transmits, or receives PHI on behalf of Covered Entity.

5.2. Termination. If either Party fails to perform any material obligation pursuant to this Agreement, and (i) cure of the failure to perform the material obligation is possible and the failure to cure continues for a period of ten (10) days after the breaching Party is notified in writing by the non-breaching Party of said failure to perform, or; (ii) cure is not possible, then the non-breaching Party may terminate the Agreement immediately by written notice of same to the breaching Party. Covered Entity, if the non-breaching Party, may also terminate any other agreement between the parties that involves the use or disclosure of PHI, in the event that Business Associate has failed to perform any material obligation pursuant to this Agreement. In addition, Covered Entity may terminate this Agreement without cause upon thirty (30) days written notice to Business Associate.

5.3. Obligations of Business Associate Upon Termination.

5.3.1. Upon termination of this Agreement for any reason, upon request of Covered Entity Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all PHI created, maintained, used, disclosed, transmitted or received from Covered Entity that Business Associate still maintains in any form. Business Associate shall retain copies of the PHI to the extent necessary to address legal, regulatory, and risk management processes and requirements.

5.3.2. If the return or destruction of PHI by Business Associate is not feasible, Business Associate will then extend the protections of this Agreement to the PHI and to limit further use.

5.3.3. The obligations set forth hereunder shall apply to all subcontractors of Business Associate that create, maintain, exchange, or receive PHI from Business Associate and Business Associate will take all necessary action to ensure that each such subcontractor complies with these provisions upon termination.

5.3.4. The obligations of Business Associate and each of its applicable subcontractors under this Section shall survive the termination of this Agreement.

## **ARTICLE VI MISCELLANEOUS**

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

6.2 Preemption. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. In the event of an inconsistency between the provisions of the HIPAA Rules and other applicable confidentiality laws, the provisions of the more restrictive rule will control.

6.3 Independent Entities. None of the provisions of this Agreement is intended to create, nor shall any be construed to create, any relationship between the Parties other than that of independent entities contracting with each other solely to effectuate the provisions of the Agreement.

6.4 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.

6.5 Amendments. 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 or any more restrictive State law and any future regulations, statutes or other guidance concerning HIPAA that may affect this Agreement.

6.6 No Third-Party Beneficiaries. This Agreement shall not in any manner whatsoever confer any rights upon or increase the rights of any third-party.

6.7 Survival of Terms. The obligations of Business Associate under Articles II, III, V, and VI of this Agreement shall survive the expiration, termination, or cancellation of this Agreement and shall continue to bind Business Associate, its agents, employees, subcontractors, successors, and assigns as set forth herein.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

BUSINESS ASSOCIATE:

COVERED ENTITY:

Lake County

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_