

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by ADAMH Board of Franklin County, (“ADAMH”) located at 447 East Broad Street, Columbus, Ohio 43215, and **ENTITY** (“Business Associate”) located at **ADDRESS**. This Agreement is effective on **DATE** (“Effective Date”).

WHEREAS, ADAMH is a health plan and is therefore a covered entity under the Health Insurance Portability and Accountability Act of 1996 and subsequent amendments thereto (“HIPAA”); and

WHEREAS, ADAMH has contracted with Business Associate **to provide services to ADAMH**; and

WHEREAS, in the course of providing such services, Business Associate will create, receive, and/or maintain Protected Health Information from or on behalf of ADAMH; and

WHEREAS, the Privacy and Security Regulations require that covered entities enter into a written agreement with all organizations which create, receive, and/or maintain protected health information from or on behalf of the covered entity;

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein, ADAMH and Business Associate agree as follows:

I. Definitions

Capitalized terms used in this Agreement shall be defined as set forth below. To the extent not otherwise defined in this Agreement or to the extent the definitions in this agreement are inconsistent with the definitions in HIPAA and the Privacy and Security Regulations, terms shall have the same meaning as in HIPAA and the Privacy and Security Regulations, as they may be periodically revised and amended subsequent to the Effective Date of this Agreement.

Breach means the acquisition, access, use, or disclosure of Protected Health Information that is not a permissible acquisition, access, use, or disclosure under the HIPAA privacy rules and which compromises the security or privacy of the Protected Health Information. An impermissible use or disclosure of PHI is presumed to be a breach unless there is a low probability that the PHI has been compromised. Breach does not include the following:

- A. Any unintentional acquisition, access, or use of Protected Health Information by an employee, officer, or contractor working for Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority of such employee, officer, or contractor working for Business Associate, and does not result in further use and disclosure of the Protected Health Information.
- B. Any inadvertent disclosure by an employee, officer, or contractor who is otherwise authorized to access Protected Health Information by Business Associate when the inadvertent disclosure is to another similarly situated employee, officer, or contractor of Business Associate; and the Protected Health Information received as a result of such disclosure is not further used or disclosed.

- C. A disclosure of Protected Health Information where Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Disclose or Disclosure means the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside of Business Associate's operations, or to a person who is not an employee or officer of Business Associate. Disclosure includes both intentional and inadvertent or accidental disclosures.

Electronic Protected Health Information means Protected Health Information that is transmitted by electronic media or maintained in electronic form.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH provisions of the American Recovery and Reinvestment Act of 2009; and regulations adopted pursuant thereto, including but not limited to 45 C.F.R. Parts 160 and 164.

Individual means a person whose Protected Health Information is created, accessed, used, held or maintained by Business Associate on behalf of ADAMH.

Individual Right means the right of an Individual to access or amend their Protected Health Information, to request an accounting of uses and disclosures of their Protected Health Information, to request restrictions on the use and disclosure of their Protected Health Information, to request confidential communications, and any similar right of an Individual with respect to Protected Health Information which arises out of HIPAA or the Privacy and Security Regulations.

Limited Data Set means Protected Health Information from which the following identifiers of the Individual, or of relatives, employers, or household members of the Individual, have been removed: (i) names; (ii) postal address information, other than town or city, state, and zip code; (iii) telephone numbers; (iv) fax numbers; (v) electronic mail addresses; (vi) social security numbers; (vii) medical record numbers; (viii) health ADAMH beneficiary numbers; (ix) account numbers; (x) certificate/license numbers; (xi) vehicle identifiers and serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) web Universal Resource Locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) biometric identifiers, including finger and voice prints; and (xvi) full face photographic images and any comparable images. A Limited Data Set may include the following identifiable information: (i) admission, discharge, and service dates; (ii) date of birth and date of death; (iii) age (including age ninety (90) or over); and (iv) five-digit zip code.

Privacy and Security Regulations means the regulations promulgated by HHS pursuant to HIPAA to address the privacy and security of Protected Health Information, including but not limited to the Breach regulations, which currently are codified at 45 C.F.R. 160 and 164, as now in effect or as amended, expanded or recodified from time to time subsequent to the Effective Date of this Agreement. Privacy and Security Regulations also include without limitation any regulations adopted under the amendments to HIPAA enacted in the Stimulus Act.

Protected Health Information or PHI means information that is received from, or created or received on behalf of ADAMH, and is information i) about an Individual which 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, and ii) which either identifies the Individual or includes information which can reasonably be used to identify the Individual. Protected Health Information pertains to both living and deceased Individuals.

Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as such definition may be amended from time to time by HIPAA or the Privacy and Security Regulations.

Security Requirements means 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316, as now in effect or as subsequently amended. Security Requirements also consist of any law or regulation promulgated after the Effective Date to address the requirements imposed on a covered entity or a business associate of a covered entity under HIPAA.

Underlying Agreement means all agreements between ADAMH and Business Associate pursuant to which Business Associate will receive, create or maintain PHI from or on behalf of ADAMH, as such may be entered into, renewed or amended from time to time.

Use means the sharing, employment, application, utilization, examination or analysis of Protected Health Information by an employee or officer of Business Associate within Business Associate's operations.

II. Restrictions on Use and Disclosure of Protected Health Information

- A. Except as otherwise provided herein, Business Associate may Use or Disclose Protected Health Information only as necessary to perform Business Associate's obligations under the Underlying Agreement, subject to the conditions and restrictions set forth below.
- B. Business Associate may Disclose Protected Health Information to other organizations with whom ADAMH has executed a business associate agreement related to ADAMH, and to Business Associate's subcontractors and agents, but only as necessary to perform services under the Underlying Agreement. Prior to the Disclosure of Protected Health Information to a subcontractor or agent of Business Associate, Business Associate and the subcontractor or agent must enter into a written agreement that includes substantially the same terms and conditions as this Agreement, and subcontractor or agent must agree in writing to be bound by the same restrictions that apply to the Business Associate under this Agreement.
- C. Unless otherwise limited by this Agreement, Business Associate may Use Protected Health Information in its possession for the proper management and administration of Business Associate or to carry out its legal responsibilities.
- D. Unless otherwise limited by this Agreement, Business Associate may Disclose Protected Health Information in its possession for the proper management and administration of Business Associate or to carry out its legal responsibilities only if such Disclosure is required by law or is addressed in this Agreement.

- E. Business Associate shall, in all cases, limit any Use or Disclosure of Protected Health Information to the Limited Data Set, if practicable, or if needed by the Business Associate, the minimum amount of Protected Health Information necessary to perform the task or accomplish the purpose of the Use or Disclosure. Upon issuance of guidance by the Secretary on what constitutes the minimum amount of Protected Health Information necessary, Business Associate shall limit the amount of Protected Health Information Used or Disclosed by Business Associate in accordance with such guidance.
- F. Business Associate must comply with the all of the provisions of the Privacy and Security Regulations that are applicable to ADAMH, and may not Use or Disclose Protected Health Information in any manner that would constitute a violation of HIPAA, including without limitation the Privacy and Security Regulations, if Used or Disclosed by ADAMH.
- G. Business Associate may not de-identify Protected Health Information created, received or maintained by Business Associate under this Agreement, except as necessary to provide service under the Underlying Agreement or as requested by ADAMH. Protected Health Information created, received or maintained by Business Associate under this Agreement which has been de-identified at the request of ADAMH may not be used by Business Associate for any purpose not expressly approved by ADAMH.
- H. Except as necessary to provide service under the Underlying Agreement, or as expressly approved by ADAMH, Business Associate may not aggregate Protected Health Information created, received or maintained by Business Associate under this Agreement, whether de-identified or not, with any other Protected Health Information, including without limitation Protected Health Information of Business Associate's other customers.
- I. Business Associate agrees to not Use or further Disclose Protected Health Information other than as authorized by this Agreement, as requested by ADAMH, or as required by law.

III. Obligations of Business Associate

- A. Business Associate acknowledges that Business Associate is subject to those provisions of the Privacy and Security Regulations that are applicable to ADAMH, and those provisions of the Privacy and Security Regulations that are directly applicable to business associates, and Business Associate certifies that Business Associate has implemented policies and procedures and taken such other action as is necessary to comply with those provisions of the Privacy and Security Regulations by the effective date provided in this Agreement or by law.
- B. Business Associate shall cooperate with ADAMH in the administration of Individual Rights, and shall provide ADAMH promptly upon request with the information in the possession of Business Associate or a subcontractor or agent of Business Associate which ADAMH deems necessary for ADAMH to respond to a request from an individual to exercise one or more Individual Rights. Upon the instruction of ADAMH, Business Associate will amend any Protected Health Information in the possession of Business Associate or a subcontractor or agent of Business Associate, and will implement

restrictions on the Use and Disclosure of Protected Health Information in the possession of Business Associate or a subcontractor or agent of Business Associate, and will employ procedures to assure confidential communications of Protected Health Information in the possession of Business Associate or a subcontractor or agent of Business Associate as directed by ADAMH. Business Associate will notify, and will require its subcontractors and agents to notify ADAMH promptly, but in no event later than five (5) days after receipt of a request from an Individual to exercise one or more Individual Rights. All requests from an Individual to exercise an Individual Right will be processed and handled by ADAMH.

- C. Business Associate shall maintain a record of all Disclosures of Protected Health Information as necessary to provide an Accounting of such Disclosures upon request. All Disclosures except the following shall be recorded for purposes of providing information for an Accounting;
- i. Disclosures made pursuant to an authorization signed by the Individual or the Individual's personal representative;
 - ii. Disclosures made directly to the requesting Individual or the Individual's personal representative;
 - iii. Disclosures for national security or intelligence purposes;
 - iv. Disclosures in the form of de-identified information or information contained in a Limited Data Set;
 - v. Disclosures to correctional institutions or law enforcement officials about inmates or others in custody.
 - vi. Disclosures for treatment, payment for treatment and the health care operations of ADAMH.
- D. Business Associate shall make its internal practices, books and records relating to Uses and Disclosures of Protected Health Information available to ADAMH, to the Secretary of the U.S. Department of Health and Human Services or designee, or to any other official or agency with enforcement authority under HIPAA, for purposes of determining ADAMH's and Business Associate's compliance with HIPAA.
- E. Upon the termination of the Underlying Agreement, Business Associate shall return or destroy all Protected Health Information and will retain no copies of such information. If such return or destruction of Protected Health Information is not feasible, as approved by ADAMH, Business Associate agrees that the provisions of this Agreement are extended beyond termination of the Underlying Agreement to the Protected Health Information still in the possession of Business Associate or a subcontractor or agent of Business Associate, and Business Associate shall limit all further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible. If Business Associate elects to destroy the Protected Health Information, it shall certify to ADAMH that the information has been destroyed. If the Business

Associate is to destroy the Protected Health Information as provided by this Agreement, then Business Associate shall (1) destroy Protected Health Information on paper, film, or other hard copy media by shredding or destroying such media so that the Protected Health Information cannot be read or otherwise cannot be reconstructed and (2) destroy electronic Protected Health Information by clearing, purging, or destroying electronic media consistent with “NIST Special Publication 800-88, Guidelines for Media Sanitization,” such that the electronic Protected Health Information cannot be retrieved.

- F. Business Associate shall, within one (1) day of discovery, report to ADAMH any Security Incident relating to Electronic Protected Health Information of which it becomes aware.
- G. Business Associate shall require all employees, officers, and subcontractors or agents working for Business Associate to report immediately to Business Associate, no later than 24 hours after discovery, any occurrence, event, or fact that could reasonably be considered an indication that a Breach of an Individual’s Protected Health Information has occurred. Upon receipt of a report, Business Associate shall immediately i) notify ADAMH of the occurrence, event, or fact, including the date and time of the discovery and as much information regarding the suspected Breach as is available; and ii) undertake an investigation of whether a Breach did occur, and apprise ADAMH of the results of the investigation on an ongoing and current basis.

Notification shall be provided by Business Associate to ADAMH. Business Associate shall, and shall require its employees, officers, and contractors to, cooperate fully with ADAMH in providing any additional information requested by ADAMH in connection with the Breach. If ADAMH determines that a Breach has occurred, Business Associate shall take all action which is reasonably requested by ADAMH to mitigate the Breach and to prevent further Breaches.

- H. If Business Associate becomes aware of any Use or Disclosure of Protected Health Information not permitted under this Agreement, it shall report such Use or Disclosure to ADAMH within one (1) business day of gaining such knowledge. Business Associate shall also use its best efforts to mitigate the effect of such unauthorized Use or Disclosure, and shall implement or modify practices or take other reasonable action to prevent further unauthorized Uses or Disclosures.
- I. Business Associate shall implement and use reasonable and appropriate administrative, technical and physical safeguards which will protect the confidentiality, integrity, and availability, and prevent uses or disclosures of Protected Health Information other than as provided for by this Agreement.
- J. Business Associate acknowledges and agrees that the Protected Health Information of ADAMH will be subject to and Business Associate shall comply with the Security Requirements. Business Associate certifies that Business Associate has adopted written policies and procedures consistent with the Security Requirements, and taken such other action as appropriate to comply with the Security Requirements.

- K. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless a valid authorization from each Individual whose information is the subject of the remuneration transaction has been obtained, and unless ADAMH has approved such remuneration transaction in writing. Approval of ADAMH must be obtained before Business Associate solicits Individuals for authorization.

IV. Termination and Survival

- A. This Agreement may not be terminated so long as the Underlying Agreement remains in effect. To the extent the Underlying Agreement is terminated for any reason whatsoever, and Protected Health Information remains in the possession of Business Associate or an agent or subcontractor of Business Associate, this Agreement shall continue in full force and effect until all Protected Health Information in the possession of Business Associate or an agent or subcontractor of Business Associate has been returned to ADAMH or destroyed.
- B. Notwithstanding any other provision of the Agreement, either party may immediately terminate the Underlying Agreement, if the other party has materially violated its responsibilities regarding Protected Health Information under this Agreement and has failed to provide satisfactory assurances to the other party within ten (10) days of notice of such material violation that the violation has been cured and steps taken to prevent its recurrence. If termination is not possible, the non-breaching party shall report the violation to HHS.
- C. The responsibilities of Business Associate under this Agreement shall survive termination of the Underlying Agreement indefinitely, until all Protected Health Information in the possession of Business Associate or an agent or subcontractor of Business Associate has been destroyed or returned to ADAMH.

V. Indemnification

Business Associate shall indemnify to the fullest extent possible ADAMH and its Board members, employees and agents for any loss, liability, damage, settlement, cost, expenses or other obligation, including without limitation reasonable attorney fees and defense costs, incurred by ADAMH or a Board member, employee or agent of ADAMH, as a result of Business Associate's breach of any obligation under this Agreement, or Business Associate's negligence in performing its obligations under this Agreement. This provision shall not inhibit ADAMH's ability to seek relief from Business Associate for any claim of negligence caused in whole or part by Business Associate or any other action at law or in equity.

VI. Amendment

- A. This Agreement may be amended only in writing signed by both parties.
- B. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance.

- C. Notwithstanding the provisions of section VI.A. of this agreement, in the event that a change in HIPAA or the Privacy and Security Regulations causes a provision of this Agreement to become invalid or requires additional safeguards for the protection of Protected Health Information, such changes shall be deemed to be effective upon written notice to Business Associate by ADAMH, with or without the execution of an amendment to this Agreement. Business Associate agrees to execute such amendments or additional agreements as may be required, in good faith and within thirty (30) days of such event, in order to comply with such changes.

VII. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio without regard to its choice of law rules, and by HIPAA. All actions regarding this Agreement shall be filed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio. The parties hereby consent to the jurisdiction and venue of such courts and waive any right to assert *forum non conveniens*.

VIII. Assignment

- A. Business Associate may not assign this Agreement, or any of the obligations of Business Associate hereunder without the written approval of ADAMH.
- B. In accordance with the above prohibition on assignments, this Agreement shall be binding upon and inure to the benefits of the heirs, successors, and assigns of the parties hereto.

IX. Notices

Except as provided expressly in this Agreement, all notices required under this Agreement shall be in writing and, unless hand delivered, sent by certified mail or other method whereby receipt is evidenced in writing, addressed as follows:

If to ADAMH: Privacy Officer, ADAMH Board of Franklin County, 447 East Broad Street, Columbus, Ohio 43215

If to Business Associate: **CONTACT, ADDRESS**

X. Waiver of Breach

- A. The waiver by either party of a breach or a violation of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach of any term or condition hereto.
- B. No waiver shall be effective against any party hereto unless in writing signed by that party.

XI. Severability

If any provision of this Agreement shall be declared invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not in any way be affected or impaired thereby.

XII. General Provisions

- A. The parties acknowledge that Business Associate is an independent contractor providing services to ADAMH, and no provision of this Agreement is intended to create or shall be construed to create any employment relationship, partnership, joint venture, or agency relationship between ADAMH and Business Associate, or ADAMH and Business Associate.
- B. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- C. This Agreement shall be construed liberally and in a manner consistent with the intent and purpose of HIPAA and the Privacy and Security Regulations, and any ambiguity shall be resolved in a manner consistent with HIPAA and the Privacy and Security Regulations.

IN WITNESS THEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

ADAMH Board of Franklin County

Signature: _____

Date: _____

Business Associate

Signature: _____

Date: _____