

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____, 201_ (“Effective Date”), by and between **PARTNERSHIP FOR CHILDREN OF ESSEX** a New Jersey corporation (“Covered Entity”) and _____, a New Jersey corporation (“Business Associate”). Covered Entity and Business Associate are at times referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, Covered Entity is a New Jersey corporation that has contracted with Business Associate to provide certain services, activities and functions on behalf of Covered Entity (“Services”), as more fully described in that agreement for those services (the “Services Agreement”); and

WHEREAS, in the course of providing Services to or on behalf of Covered Entity, Business Associate will have access to Protected Health Information (“PHI”) maintained by Covered Entity that is protected as confidential under the Privacy Standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 and set forth at 45 C.F.R. Parts 160 and 164, and its implementing regulations (“HIPAA Privacy Standards” and “HIPAA Security Standards”) as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) and its implementing regulations; and

WHEREAS, Covered Entity is required by the HIPAA Privacy Standards to enter into this Agreement and keep this Agreement in full force and effect in order to disclose and/or grant access to PHI maintained by Covered Entity in connection with the performance of the Services; and

WHEREAS, Business Associate is required, following the discovery of a Breach (defined below) of Unsecured PHI (defined below), to notify Covered Entity of such breach pursuant to 45 C.F.R. § 164.410; and

WHEREAS, Business Associate is required, under New Jersey’s Breach of Personal Information Notification Act, N.J.S.A.56:8-161 *et seq.*, to notify Covered Entity of a Breach of the Security of the System as defined therein; and

WHEREAS, this Agreement is intended to comply with the provisions of 45 C.F.R. § 164.504(e).

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Business Associate and Covered Entity hereby agree as follows:

1. Definitions. The following terms shall have the meaning set forth below. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.402 and 164.501.

(a) “Individual” means the person who is the subject of PHI, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(b) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

(c) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.501 and federal and state laws that are more stringent than the HIPAA Privacy Regulations.

(d) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

(e) “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. PHI may be in electronic or paper form.

(f) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

(g) “Security Standards” shall mean the Security Standards for the Protection of Electronic PHI, 45 C.F.R. Sections 164.302 *et seq.*

(h) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

(i) “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.40 and shall have the same meaning as the term “Breach of security” in N.J.S.A. 56:8-161.

(j) “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. §164.402. Unsecured PHI can be in either electronic or paper form.

(k) “Data Aggregation” shall mean, with respect to PHI created or received by Business Associate in its capacity as the business associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(l) “Covered Account” shall have the same meaning as the term “covered account” in 16 C.F.R. § 681.2.

2. Permitted Uses.

(a) Business Associate may use or disclose Protected Health Information (solely to the extent reasonably necessary to perform the Services and all reasonably related treatment, payment and operations activities.

(b) Notwithstanding anything to the contrary, Business Associate shall not, and shall ensure that its employees and agents do not, use or further disclose Protected Health Information in a manner that would violate the terms of this Agreement and/or the HIPAA Privacy Standards.

(c) Business Associate may use and disclose Protected Health Information: (i) for the proper management and administration of the Business Associate if necessary; (ii) to carry out the legal responsibilities of the Business Associate to Covered Entity and (iii) to provide Data Aggregation services relating to the health care payment and operations activities of Covered Entity.

(d) To the extent Business Associate discloses Protected Health Information to a third party, other than its own employees, the Business Associate must obtain, prior to making any such disclosures: (i) reasonable assurances from the third party to whom the Protected Health Information is disclosed that the Protected Health Information will be held confidential as provided pursuant to this Agreement and not used or further disclosed, except as Required by Law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to immediately notify Business Associate of any instances of which the third party is aware in which this provision and/or the confidentiality of the PHI has been breached.

(e) Without limitation of the foregoing, Business Associate hereby agrees to the following with respect to PHI:

(1) Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Privacy and Security Standards; said administrative safeguards shall include, but not be limited to, appropriate training and education of Business Associate's employees and agents regarding HIPAA's Privacy and Security Standards;

(2) Business Associate shall ensure that any agent, including a subcontractor, to whom it provides such information: (a) has implemented and continuously maintains the same or higher safeguards as provided in Section 2(e)(1) above; and (b) any Business Associate agent or subcontractor shall immediately upon learning of any Security Incident or improper use or disclosure inconsistent with HIPPA'S Privacy Standards report said incident, improper use or disclosure to Business Associate shall, among other things, implement appropriate safeguards to protect to protect said information.

(3) Business Associate shall report to the Covered Entity any Security Incident or improper use or disclosure, by it, its agents and/or its subcontractors which is inconsistent with HIPAA's Privacy Standards, immediately upon its becoming aware of said event.

(f) Business Associate shall, at the reasonable request of Covered Entity, provide security data audit information such that the Covered Entity is assured that Business Associate is fulfilling its obligations to properly manage and monitor security incidents, and in the event of a security incident or data breach, be able to perform a forensic analysis of the incident or breach.

3. Limitation on Use and Appropriate Safeguards. Business Associate shall not use or further disclose Protected Health Information other than as permitted by this Agreement or as required by law and shall use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as permitted by this Agreement.

4. Mitigation of Disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure, Breach or Security Incident involving Protected Health Information by Business Associate, its employees, agents or a third party to whom Business Associate disclosed Protected Health Information pursuant to Section 2(d), that is in violation of the requirements of this Agreement. In the event Business Associate fails to perform its obligations with respect to the use, disclosure and protection of PHI under this Agreement, Covered Entity may, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity, and reporting by Business Associate, as Covered Entity, in its sole discretion, determines necessary to maintain compliance with this Agreement and applicable law. Covered Entity may, also, at its option, determine to immediately discontinue providing PHI to Business Associate with or without written notice to Business Associate.

5. Report of Breach.

(a) Business Associate shall, immediately upon learning of any Breach in violation of this Agreement by Business Associate or its employees, agents, subcontractors or any other third party to which Business Associate disclosed Protected Health Information, provide Covered Entity a complete written factual description of the Breach including such information as is required for Covered Entity to comply with its own reporting obligations under applicable federal and state laws.

(b) In the event of a Breach which must be reported to Covered Entity as described in Section 5 (a), above, Business Associate agrees to use its best efforts to work cooperatively with Covered Entity and at the reasonable direction of the Covered Entity in complying with any applicable law currently in effect or which becomes effective during the term of this Agreement which governs Breach notification to those individuals who require notice under applicable law. Further, Business Associate shall timely provide to Covered Entity any and all information requested by Covered Entity and/or any state or federal agency which subsequently investigates any Breach.

(c) Business Associate must notify Covered Entity without unreasonable delay and in no event later than 48 hours of its discovery of a Breach. A Breach will be treated as discovered as defined in 45 C.F.R. § 164.410 (on first day on which Business Associate knew or by exercising reasonable diligence should have known of Breach).

6. Damages. In the event a Breach is attributable to Business Associate, its employees, agents, and/or subcontractors, Business Associate agrees to indemnify and hold harmless Covered Entity and to assume full and complete responsibility for any and all direct or indirect costs related to the investigation, response, mitigation, or notification of the Breach and for any actual damages, fines, claims or other costs payable by Covered Entity in relation to the Breach. The remedy provided for in this Section shall be in addition to any other remedy available at law or in equity. Business Associate agrees to make itself or any of its agents or subcontractors, employees or agents assisting Business Associate in the performance of its duties hereunder available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed Breach.

7. Agents, Subcontractors. Business Associate shall enter into an agreement with any agents, including any subcontractors, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractors agrees to the same terms, restrictions and conditions that apply to the Business Associate pursuant to this Agreement with respect to such information.

8. Access to Protected Health Information. If requested by Covered Entity, Business Associate shall make available to Covered Entity Protected Health Information about an individual contained in an original Designated Record Set maintained by Business Associate, for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to Protected Health Information directly from Business Associate (other than by legal process or subpoena), Business Associate shall forward such request to Covered Entity. Any denials of individual requests for access to the Protected Health Information provided by Business Associate to Covered Entity shall be the responsibility of Covered Entity.

9. Amendment to Protected Health Information. If requested by Covered Entity to amend an individual's Protected Health Information or a record regarding an individual contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. §164.526.

10. Accounting of Disclosures of Protected Health Information. If Business Associate is notified by Covered Entity that it has received a request for an accounting of disclosures of Protected Health Information regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate agrees to make the accounting required by 45 C.F.R. §164.528. Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or

person who received the Protected Health Information, and if known, the address of such entity or person; (iii) the name of the individual who is the subject of the PHI and a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

11. Availability of Books and Records to Secretary. Business Associate shall, subject to attorney-client and other applicable legal privileges, make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Privacy Standards. Business Associate shall provide Covered Entity with a copy of all information provided the Secretary.

12. Responsibilities of Covered Entity. With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Covered Entity hereby agrees:

(a) to inform the Business Associate in writing of any changes in the form of notice of privacy practices (the "Notice") that the Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, and provide the Business Associate a copy of the Notice currently in use.

(b) to inform the Business Associate in writing of any changes in, or withdrawal of, the authorization provided to the Covered Entity by individuals pursuant to 45 C.F.R. § 164.508 pursuant to which Covered Entity has disclosed Protected Health Information to Business Associate.

(c) to notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 and agreed to by the Covered Entity.

(d) that Business Associate may make any use and/or disclosure of Protected Health Information permitted under 45 C.F.R. § 164.512 except uses or disclosure for research, which are not permitted without prior approval by the Covered Entity.

(e) to inform Business Associate in writing of the names of all individuals who Covered Entity considers to be the personal representative of any individual with respect to whom Protected Health Information is provided to Business Associate, as such term is defined in the HIPAA Privacy Standards, and to whom Business Associate may use/disclose Protected Health Information of such individual.

(f) Business Associate shall ensure that it is in compliance with any restrictions on the use or disclosure of Protected Health Information under New Jersey state laws which are more stringent than the HIPAA Privacy Standards.

13. Termination.

(a) This Agreement shall terminate automatically when Business Associate ceases to perform the Services pursuant to the Services Agreement and when all Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with Section 13(d) hereof.

(b) This Agreement may be terminated by Covered Entity upon thirty (30) days' prior written notice to Business Associate.

(c) Covered Entity may terminate this Agreement immediately upon written notice to the Business Associate, if Covered Entity determines that Business Associate has breached or violated a material term of this Agreement unless the Business Associate has cured the breach or ended the violation within thirty (30) days of Business Associate's receipt of such notice.

(d) Business Associate shall, upon termination of this Agreement, return, or, with Covered Entity's written agreement destroy, all Protected Health Information received from, or created or received by the Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form, and shall retain no copies of such Protected Health Information. . If such return or destruction is not feasible, Business Associate shall notify Covered Entity in writing that such return or destruction is not feasible, extend the protections of this Agreement to such Protected Health Information, and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible. The duties hereunder to maintain the security and privacy of protected health information shall survive the termination of this Agreement.

(e) Nothing herein shall be construed to permit or require termination of the Services Agreement except in accordance with its terms.

14. Relationship of the Parties. It is the parties' intent that the Business Associate, its agents, employees, and/or subcontractors, shall be considered, at all times, to be independent contractors of the Covered Entity. The parties acknowledge that, except as expressly set forth in this Agreement: (i) the Business Associate, its employees, agents and/or subcontractors shall not be under the apparent or actual direction or control of the Covered Entity with respect to services provided; (ii) the Business Associate shall be solely responsible for the manner and method by which services are provided; and (iii) such services shall be provided without direction from the Covered Entity as to the manner and method by which services are provided.

15. Entire Agreement. This Agreement supersedes all prior agreement between the parties which deal solely with compliance with HIPAA. To the extent that other agreements between the parties address compliance with HIPAA and other subjects, this Agreement shall supersede only those portions of such agreements relating to HIPAA compliance and will not affect any other portions of such agreements.

16. Severability. In the event any term or provision of this Agreement is rendered invalid or unenforceable by any valid act of Congress or the state legislature, or by any regulation duly promulgated by officers of the United States or the State of New Jersey acting in accordance with law, or is held by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

17. Assignment. This Agreement shall be binding upon and for the benefit of the Parties, their successors and assigns; provided that neither Party may assign their rights or obligations under this Agreement without the prior written consent of the other party, except that Covered Entity may assign this Agreement to an affiliate or successor of Covered Entity without the consent of Business Associate.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without regard to conflicts of laws principles.

19. Waiver. Delay or failure to exercise any right hereunder shall not impair such right or be construed as a waiver thereof or an acquiescence to a breach of this Agreement. Any single or partial exercise of any right shall not preclude any other or further exercise thereof or the exercise of any other right.

20. Paragraph Headings. The paragraph headings in this Agreement are for convenience only. They form no part of this Agreement and shall not affect its interpretation.

21. Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Standards means the section then currently in effect or as amended, and for which compliance is currently required.

22. Amendment. No amendments or additions to this Agreement shall be binding unless such shall be in writing signed by the Parties. Notwithstanding the foregoing, 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 Privacy Standards and the Health Insurance Portability and Accountability Act of 1996.

23. Term. The term of this Agreement, unless otherwise provided herein, shall be the exact same term as that set forth in the Services Agreement. The Services Agreement is hereby incorporated herein and made a part hereof.

24. Indemnification. Business Associate shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Covered Entity and his/her respective employees,

directors, and agents ("Indemnitees") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys fees, including at trial and on appeal) asserted or imposed against any Indemnitees arising out of the gross negligence or willful misconduct of Business Associate or any subcontractor of or consultant of Business Associate or any of Business Associate's work force members, directors, or agents related to the performance or nonperformance of this Agreement.

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

PARTNERSHIP FOR CHILDREN OF ESSEX

By: _____
Name:
Title:

(Business Associate)

By: _____
Name:
Title: President