

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into and made effective on _____ between _____ ("Business Associate") with the address of _____ and **TALLAHASSEE MEMORIAL HEALTHCARE, INC.** ("TMH"), ("Covered Entity"), a Florida non-profit corporation, with the address of 1300 Miccosukee Road, Tallahassee, Florida 32308 for the purpose of ensuring compliance with the requirements of HIPAA, the Regulations, and Florida law.

WITNESSETH

WHEREAS, Covered Entity is a health care provider and a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended time to time, ("HIPAA") and its implementing regulations, all as amended from time to time; and

WHEREAS, Business Associate is a "business associate" as defined in HIPAA; and

WHEREAS, Covered Entity wishes to commence or continue a business relationship with Business Associate pursuant to one or more agreements between the parties (collectively, the "Underlying Agreement") that may involve the creation, receipt, use, maintenance, transmission and/or disclosure of Protected Health Information ("PHI") as that term is defined in the HIPAA implementing Regulations; and

WHEREAS, the HIPAA Privacy Standards, at 45 CFR Part 160 and Subparts A and E of Part 164, as amended from time to time (the "Privacy Rule"), require Covered Entity to obtain and document satisfactory assurances from the Business Associate that the Business Associate shall appropriately safeguard PHI through a written contract; and

WHEREAS, the HIPAA Security Standards, at 45 CFR Part 160 and Subparts A and C of Part 164, as amended from time to time (the "Security Rule"), govern the security of PHI obtained, created or maintained electronically by covered entities and business associates as defined in HIPAA; and

WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act, found in Titles XIII and XIV of the American Recovery and Reinvestment Act of 2009, modifies certain provisions of HIPAA relating to the privacy and security of PHI; and

WHEREAS, the parties acknowledge that Business Associate must comply with the requirements of the Security Rule and certain elements of the Privacy Rule and in the event of a violation of HIPAA or the HITECH Act by Business Associate, Business Associate will be subject to the same civil and criminal penalties as Covered Entity would be for such violation by Covered Entity; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and its implementing regulations at 45 CFR Parts 160 and 164 as amended from time to time (the "Regulations"), and Florida law.

WHEREAS, Covered Entity and Business Associate are independent contractors and are not Agents of each other and will not act in any way or make any request that would create an agency relationship.

NOW THEREFORE, in consideration of their mutual promises made herein, and for other good and valuable consideration, receipt of which is hereby acknowledged by each party, the Parties, intending to be legally bound, herein agree as follows:

1. Definitions for Use in This Agreement. Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning ascribed to those terms in the Regulations.

2. Obligations and Activities of Business Associate.

- a. Prior to executing this Agreement and thereafter upon request by Covered Entity, Business Associate shall complete and provide to Covered Entity, the "HIPAA Security Questionnaire for Business Associates," and responses to this Questionnaire must be acceptable to Covered Entity.
- b. Upon written request by Covered Entity, Business Associate shall provide to Covered Entity evidence of the performance of an information security assessment as required by the Security Rule, which evidence shall be acceptable to Covered Entity.
- c. Upon written request by Covered Entity, Business Associate shall provide to Covered Entity a copy of its written policies and procedures relating to compliance with the Security Rule and the name of the person responsible for BA's HIPAA Security Rule compliance.
- d. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law, as that term is defined in HIPAA, the HITECH Act and/or applicable regulations.
- e. Business Associate agrees 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 PHI other than as provided for by this Agreement.
- f. Business Associate agrees to report in writing to Covered Entity any Use or Disclosure of PHI not provided for by this Agreement and any successful Security Incident as expeditiously as practicable, but not later than ten (10) calendar days after becoming aware of such Use or Disclosure or Security Incident, including any Breach of Unsecured PHI as required at 45 CFR 164.410.
 - 1) In the report to Covered Entity concerning the successful Security Incident or unauthorized Use or Disclosure, the Business Associate shall identify: the date of the Security Incident or unauthorized Use or Disclosure, the scope of the Security Incident or unauthorized Use or Disclosure, the Business Associate's response to the Security Incident or unauthorized Use or Disclosure and the identification of the party responsible for causing the Security Incident or unauthorized Use or Disclosure, if known, and additional information as it becomes known.
 - 2) In the report to Covered Entity concerning the Breach of Unsecured Protected Health Information the Business Associate shall provide the information as required by 45 CFR 164.410.
- g. Business Associate agrees to mitigate, to the extent practicable, any harmful effect known to Business Associate of its Use or Disclosure of PHI in violation of the requirements of this Agreement and/or the Privacy Rule.
- h. Business Associate shall defend, indemnify, and hold harmless TMH, its officers, directors, employees, and agents, from and against all claims, liabilities, suits, judgments, fines, assessments, penalties, damages, costs, and other expenses of any kind or nature whatsoever, including without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, related in any manner to or arising out of or related to any "Breach," as defined in the HITECH Act, by Business Associate or its subcontractors, including but not limited to fines, the cost of notification to individuals made by Covered Entity pursuant to 45 C.F.R. § 164.404 and the cost of remedial actions taken to protect individuals whose information was disclosed in violation of this Agreement, HIPAA, the HITECH Act, or the regulations promulgated thereunder. Business Associate further agrees to defend, indemnify, and hold harmless TMH, its officers, directors, employees, and agents, from and against all claims, liabilities, suits, judgments, fines, assessments, penalties, damages, costs, and other expenses of any kind or nature whatsoever, including without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, related in any manner to or arising out of any material breach of this Agreement by Business Associate, its agents, representatives, officers, employees, or subcontractors. These indemnities are in addition to, and shall not affect or otherwise modify, any indemnities set forth in the Underlying Agreement(s) between the parties. These indemnities shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

- i. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same (or more stringent) restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
 - j. Within ten (10) business days after a written request from Covered Entity, Business Associate agrees to make available PHI in a Designated Record Set ("DRS"), to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR §164.524. In the event any Individual requests access to PHI directly from Business Associate, Business Associate shall forward written notice of such request to Covered Entity within ten (10) business days after such request. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
 - k. Business Associate agrees to make any amendment(s) to PHI in a DRS that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the written request of Covered Entity within twenty (20) business days of the written request. Requests received directly from individuals will be referred to the Covered Entity within ten (10) days of receipt of the request.
 - l. Business Associate agrees to make its internal practices, books, and records, available to the Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule. Business Associate shall inform the Covered Entity of the request.
 - m. Business Associate agrees to maintain and make available to Covered Entity within fifteen (15) business days of written notice from Covered Entity to Business Associate the information required to provide an accounting of disclosures to an Individual as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
 - n. To the extent Business Associate is required to carry out any obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of such Privacy Rule that apply to Covered Entity in the performance of such obligation(s).
 - o. Business Associate shall comply with the Regulations applicable to Business Associate under HIPAA and any rules or regulations promulgated thereunder.
3. Permitted Uses and Disclosures by Business Associate - General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI to perform the functions, activities, or services for, or on behalf of, Covered Entity, specified in the Underlying Agreement provided that such Use or Disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.
4. Permitted Uses and Disclosures by Business Associate - Specific Use and Disclosure Provisions.
 - a. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such Use(s) or Disclosure(s) are Required By Law or Business Associate obtains reasonable assurances from the person to whom the PHI is Disclosed that it will: (1) be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed only to the person; and (ii) notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
 - b. Business Associate may Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).
 - c. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
 - d. Business Associate may provide data aggregation services relating to the health care operations

of the covered entity as may be required and described in the Underlying Agreement.

5. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

- a. 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(s) may affect Business Associate's Use or Disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of PHI 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 PHI.

6. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7. Florida State Requirement. Business Associate shall take reasonable measures to protect and secure data in electronic form containing Personal Information (as defined in § 501.171, Florida Statutes). In the event of a Breach of Security (as defined in §501.171 of the Florida Statutes), Business Associate shall notify Covered Entity as expeditiously as practicable, but in no event later than ten (10) calendar days following the Breach of Security or reason to believe the Breach (as defined in §501.171 of the Florida Statutes) occurred. Business Associate shall provide Covered Entity with all information Covered Entity needs to comply with any applicable notice requirement(s) under Florida law. All PHI received by Business Associate shall be physically stored and maintained in the continental United States or its territories or Canada in accordance with § 408.051(3), Florida Statutes.

8. Term and Termination.

- a. Term. The Agreement shall commence on the Effective Date of this Agreement and shall continue in effect until each of the Underlying Agreements is terminated.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation within thirty(30) days after written notice and, if Business Associate does not cure the breach or end the violation within that time, terminate this Agreement; or
 - 2) Immediately terminate this Agreement and/or any or all of the Underlying Agreements upon written notice if Business Associate has breached a material term of this Agreement and cure is not possible as determined at the sole discretion of Covered Entity; or
 - 3) If neither termination nor cure is feasible, report the violation to the Secretary of the Department of Health and Human Services.
- c. Effect of Termination.
 - 1) Except as provided in paragraph (2) of this subsection (c), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI. This provision shall apply to PHI that is in the possession of any Subcontractor and Agent of Business Associate, and Business Associate has the duty to ensure that any and all of its Subcontractors and agents comply with these termination provisions. Neither Business Associate, nor any of its Subcontractors and agents, shall retain any copies of PHI upon termination of this Agreement.
 - 2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the

conditions that make return or destruction infeasible thirty (30) calendar days prior to the termination of the Agreement or within thirty (30) calendar days of Business Associate's receipt of notice from Covered Entity of a material breach of this Agreement by Business Associate. Upon mutual agreement of the parties that return or destruction of PHI is infeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

9. Effect on Prior Business Associate Agreements. This Agreement supersedes and replaces any existing Business Associate Agreement in effect between Business Associate and Covered Entity. Any PHI Business Associate has received from Covered Entity prior to, on, or after the date of this Agreement is subject to the terms and conditions of this Agreement.

10. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section of the Regulations means the section as in effect or as amended.
- b. Amendment. 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 Privacy Rule and HIPAA; amendments are not effective unless in writing, signed by both parties.
- c. Survival. The respective rights and obligations of Business Associate under Section 8c, "Effect of Termination," and Section 2.h., "Regarding Indemnification", and 2.m., "Regarding Accounting of Disclosures" of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- e. Notice. Any notice required under this Agreement shall be sent by certified mail, return receipt requested or by hand delivery to the following persons:

To Covered Entity: Tallahassee Memorial HealthCare, Inc.
Corporate Compliance & Privacy
1300 Miccosukee Road
Tallahassee, FL 32308
ATTN: Privacy Officer
Compliance@tmh.org

With a copy to: Pennington, P.A.
215 South Monroe Street, Second Floor
Tallahassee, Florida 32301
ATTN: E. Murray Moore, Jr., Esquire

To Business Associate: _____

Email: _____

IN WITNESS THEREOF, the parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date last written below.

**TALLAHASSEE MEMORIAL
HEALTHCARE, INC.**

Name of Business Associate

Authorized Representative Signature

Authorized Representative Signature

Date: _____

Date: _____

Authorized Representative Name:

Authorized Representative Name:

Authorized Representative Title:

Authorized Representative Title:
