



BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT (the “Agreement”) is entered into this ___ day of _____, 2020, by and between the Collier County Sheriff’s Office (the “Plan”) and _____ (“Business Associate”).

WITNESS:

WHEREAS, Business Associate has been retained by the Plan to perform services on its behalf; and

WHEREAS, in connection with Business Associate’s provision of services, the Plan may disclose to the Business Associate protected health information (as defined below) concerning the Plan and its activities; and

THEREFORE, the parties agree to enter into a confidential relationship with respect to the disclosure by the Plan to Business Associate of certain information.

Definitions:

- (a) **Breach**: as defined in 45 CFR 164.402, means the acquisition, access, use, or disclosure of protected health information in a manner not permitted which compromises the security or privacy of the protected health information.
- (b) **Business Associate**: “Business Associate” shall mean American Health Holding, Inc.
- (c) **Covered Entity**: “Covered Entity” shall mean the Collier County Sheriff’s Office.
- (d) **HITECH Act**: means the Health Information Technology for Economic and Clinical Health Act.
- (e) **Individual**: “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (f) **Notification Rules**: means regulations regarding Notification in the Case of Breach of Unsecured Protected Health Information issued by the Department of Health and Human Services (DHHS) pursuant to the HITECH Act, and found at 45 CFR 160, subparts A and D, as the same may be revised or recodified from time to time, and includes associated guidance issued by DHHS.
- (g) **Non-Permitted Use or Disclosure**: means a Use or Disclosure of the Plan’s Unsecured Protected Health Information that is not permitted by this Agreement.
- (h) **Privacy Rule**: “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E.
- (i) **Protected Health Information**: “Protected Health Information” (“PHI”) shall have the same meaning as the term “protected health information” in 45 CFR 164.501, limited to the information created or

received by Business Associate from or on behalf of Covered Entity. The term “Protected Health Information” shall also include the term “Electronic Protected Health Information” as the term is defined within HIPAA.

- (j) Required by Law: “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.501.
- (k) Secretary: “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- (l) Unsecured Protected Health Information: means “unsecured health information” as defined in 45 CFR 164.402, as the same may be revised or re-codified from time to time.

Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as required by law. Furthermore, upon the request of an Individual, Business Associate will not disclose such Individual’s PHI for purposes of Payment or Health Care Operations if the individual paid in full out of pocket for the health care item or service to which the PHI relates, in accordance with HITECH (including 42 U.S.C. Section 17935(a)).
 - (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided by this Agreement.
 - (c) Business Associate shall develop, implement, maintain and use administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI relating to the Plan.
 - (d) Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the Plan. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C. Section 17931).
 - (e) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
 - (f) Business Associate shall report to the Plan in writing (a) any Security Incident; or (2) any use or disclosure of PHI not permitted by this Agreement; or (3) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A Section 17932, of which it becomes aware. For purposes of this Agreement, the term “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI relating to the Plan.
- (1) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the Plan’s Privacy Official (or to the Plan’s Security Official in the event of a Security Incident) within 3 business days after Business Associate learns of such unauthorized

use or disclosure of Security Incident. Business Associate's report shall: (i) identify the nature of the unauthorized use or disclosure or Security Incident; (ii) identify the PHI affected; (iii) identify who made the unauthorized use and/or received the unauthorized disclosure and/or participated in the Security Incident, if known; (iv) identify what Business Associate has done or shall do to mitigate any deleterious effect of unauthorized use or disclosure or Security Incident; (v) identify what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure or Security Incident; and (vi) provide such other information, including a written report, as reasonably requested by the Plan's Privacy Official or Security Official. Any Security Incident or unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under section (2) below.

(2) Notification of Breach. Pursuant to HITECH, including 42 U.S.C. Section 17932, and regulations under 45 CFR Parts 160 and 164, as amended, Business Associate shall provide written notice to the Plan's Privacy Official of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate shall conduct the risk assessment to determine whether a Breach occurred. Business Associate's report to the Plan shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) who made the unauthorized use and/or received the unauthorized disclosure; (iv) the types of Unsecured PHI involved in the Breach; (v) any specific steps the Individual should take to protect him or herself from potential harm related to the Breach; (vi) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vii) contact procedures for how the Individual can obtain further information from the Business Associate; and (viii) such other information, including the risk assessment analysis prepared by the Business Associate, as reasonably requested by the Plan's Privacy Official.

- (g) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate, the Privacy and Security Regulations and HITECH with respect to such information.
- (h) Business Associate agrees to provide access, at the request of the Covered Entity, within thirty (30) days of notification, to PHI in a designated Record Set, to Covered Entity, or as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524 and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C. Section 17935(e).
- (i) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Entity or an Individual, within thirty (30) days of request.
- (j) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created by Business Associate on behalf of Covered Entity available to the Covered Entity or to HHS or its designee, within thirty (30) days of request, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and HITECH.

- (k) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Plan shall designate the time and manner in which Business Associate shall provide the accounting of its disclosures of the Plan.
- (l) Business Associate agrees to provide to Covered Entity or an Individual, in no more than thirty (30) days, information collected in accordance with Section (f)(2) of this Section of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and HITECH, including 42 U.S.C.S. Section 17935 (c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, at the Plan's election, the Plan can provide an Individual who requests such accounting with the Business Associate's contact information, and Business Associate shall provide the accounting directly to the Individual upon request by the Individual.
- (m) Business Associate shall not receive direct or indirect payment in exchange for any PHI relating to the Plan or its Individuals, including Electronic Health Records, unless Business Associate receives authorization by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A Section 17935(d).
- (n) Business Associate shall not receive direct or indirect payment for marketing communications which include PHI relating to the Plan or its Individuals without authorization from the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C. Section 17936.

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 Protected Health Information to [perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement with American Health Holding, Inc., 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 the Covered Entity.

- (a) Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity or to the Secretary, in thirty (30) days or designated by the Secretary, for purposes of the Secretary determining Covered Entity compliance with the Privacy Rule.
- (b) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- (c) Business Associate agrees to provide to Covered Entity or an Individual, within thirty (30) days, information collected in accordance with paragraph (f)(2) of the **Obligations and Activities of Business Associate** section of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

- (d) Business Associate, on behalf of the Plan Sponsor of the Covered Entity, may use or disclose information, data, documents and records necessary for the sponsor to comply with the Early Retiree Reinsurance Program, as created by the Patient Protection and Affordable Care Act, Pub. L. No. 111-49, in a time and manner specified by the Secretary. The Business Associate acknowledges that PHI used in this manner is for the purpose of obtaining Federal funds.

Specific Use and Disclosure Provisions

- (a) 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 legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information had been breached.
- (c) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR Part 164.504(e)(2)(i)(B).
- (d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR Part 164.502(j)(1).

Obligations of Covered Entity:

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 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 of disclosure of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction to 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.

Permissible Requests by Covered Entity:

- (a) Business Associate shall use and/or disclose PHI created for or received from or on behalf of the Plan only to the extent necessary to satisfy Business Associate's obligations under the Agreement.

Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule.

Immediately upon discovering any Non-Permitted Use or Disclosure, the Business Associate will report to the Plan at least the following information:

- (1) A brief description of the Non-Permitted Use or Disclosure, including the date it occurred, if known, and the date it was discovered.
- (2) For each affected individual, a description of the types of unsecured PHI that were involved in the Non-Permitted Use or Disclosure, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved.
- (3) The identity of any individual making the Non-Permitted Use or Disclosure.
- (4) The identity of any individuals who received the Non-Permitted Disclosure.
- (5) The steps that the Business Associate has taken to mitigate any harm that might be caused by the Non-Permitted Use or Disclosure.
- (6) Any steps affected individuals should take to protect themselves from potential harm resulting from the Non-Permitted Use or Disclosure.
- (7) A brief description of what the Business Associate is doing to investigate the Non-Permitted Use or Disclosure, to mitigate harm to affected individuals, and to protect against any further Non-Permitted Use or Disclosure.
- (8) The contact procedures for individuals to ask questions or learn additional information, which must include a toll-free telephone number and an e-mail address or website.
- (9) Such other information, including a written report, as the Plan may reasonably request.

The Business Associate is deemed to have discovered any Non-Permitted Use or Disclosure when it would be treated as discovered according to 45 CFR Part 164.410.

The Business Associate will provide the report required by paragraph (a) to the Plan's Privacy Official or Security Official as soon as possible, but in no event later than fifteen (15) days after discovery as specified in paragraph (f)(1) of the **Obligations and Activities of Business Associate** section of this Agreement.

The report required by paragraph (a) may be delayed to the extent that such delay is requested by a law enforcement official in accordance with 45 CFR Part 164.412.

The provisions of the Agreement are extended as needed to cover the Plan's obligations under the Notification Rules. For example (and without limiting the generality of the preceding sentence), the provisions that cause various obligations to survive beyond termination of the Agreement are extended as needed so that the Business Associate will report to the Plan any Non-Permitted Use or Disclosure occurring after termination of the Agreement.

Specific Use and Disclosure Provisions:

- (a) Business Associate may use PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose PHI for such purposes only if:
 - (1) The disclosure is required by law; or
 - (2) Business Associate obtains reasonable assurance from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
 - a. Hold such PHI in confidence and use or further disclose it only for the purposes for which Business Associate disclosed it to the person or organization or as required by law; and
 - b. Notify Business Associate of any instance in which the person or organization becomes aware that the confidentiality of such PHI was breached.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR Part 164.504 (e)(2)(i)(B).
- (c) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR Part 164.502(j)(1).

Obligations of Business Associate

- (a) Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security safeguards to preserve the confidentiality, integrity and availability of all PHI. Business Associate shall document and keep these safeguards current.
- (b) If Business Associate conducts any standard transaction for or on behalf of the Plan, Business Associate shall comply, and shall require any subcontractor or agent conducting such standard transaction to comply, with each applicable requirement of Title 45, Part 162 of the CFR. Business Associate shall not enter into or permit its subcontractors or agents to enter into any Trading Partner Agreement in connection with the conduct of the standard transactions for or on behalf of the Plan that: (a) changes the definition, health information condition or use of a health information element or segment in a standard; (b) adds any health information elements or segments to the maximum defined health information set; (c) uses any code or health information elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (d) changes the meaning or intent of the standard implementation specification(s).
- (c) Business Associate shall make available to the Plan PHI necessary to respond to an Individual's request for access to PHI. Business Associate shall forward to the Plan any and all requests by an individual for access such records.
- (d) Business Associate shall, upon receipt of notice from the Plan, amend or correct PHI in its possession or under its control.

- (e) Business Associate shall report breaches of unsecured PHI to covered entity in accordance 45 CFR Part 164.410.
- (f) Business Associate will ensure that any subcontractors creating or receiving PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information.

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.

Term and Termination:

- (a) Term: The Term of this Agreement shall be effective as of the effective date on Page 1, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created and 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 PHI, protections are extended to such information, in accordance with the termination provisions in this section.
- (b) Termination for Cause: Upon Plan's knowledge of a material breach by Business Associate, Plan shall:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Plan.
 - (2) Immediately terminate this Agreement if Business Associate has breached a material term of the Agreement and cure is not possible.
- (c) Return or Destruction of Health Information:
 - (1) Except as provided in paragraph (2) of this section, upon termination, cancellation, expiration or other conclusion of this Agreement, Business Associate shall return to Plan or destroy all PHI received from the Plan, or created or received by Business Associate on behalf of the Plan. This provision shall apply to PHI that is in the possession of the subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Plan notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

Miscellaneous:

- (a) Regulatory References: A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

- (b) Automatic Amendment: Effective when compliance is required with regard to any future final regulations relating to the Plan’s or the Business Associate’s obligations under the Privacy Rules, the Security Rules or the Notification Rules, the Agreement will be automatically amended so that the Plan and the Business Associate remain in compliance with applicable requirements.
- (c) Survival: The respective rights and obligations of Business Associate under the **Term and Termination** section of this Agreement shall survive the termination of this Agreement.
- (d) Hold Harmless: Business Associate shall indemnify and hold the Plan, the Sheriff, and its employees harmless from all liabilities, penalties taxes, costs, expenses or damages of any sort resulting from or attributable to Business Associate’s breach of this Agreement.
- (e) Interpretation: Any ambiguity in this Agreement or the application of its terms will be resolved in a manner that (1) permits the Plan and the Business Associate to comply with the applicable requirements of the Privacy Rules, the Security Rules, and the Notification Rules; and (2) does not require the Plan or the Business Associate to meet any standard that is more stringent than those applicable to each of them under the Privacy Rules, the Security Rules, and the Notification Rules.
- (f) Conflict: In the event of any conflict between terms of this Agreement and any other agreements between the parties, the terms of this Agreement shall govern using the disclosure of PHI.

IN WITNESS WHEREOF, the parties hereto, each acting through its duly authorized officers, have set their hands and seals hereto as of the day and year first above written.

ACKNOWLEDGED AND AGREED TO BY:
COLLIER COUNTY SHERIFF’S OFFICE

(Contractor)

BY: _____
Sheriff Kevin Rambosk

BY: _____

Date: _____

Date: _____

Witnessed: _____

Witnessed: _____

Each individual signing above represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

The “Effective Date” of this Agreement is the latter of the two dates in the above signature block.