



## BUSINESS ASSOCIATE AGREEMENT Fulton County Government and HIV Service Provider



### 1. PREAMBLE AND DEFINITIONS

- 1.1 Pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), Fulton County, a political subdivision of the State of Georgia, or any of its corporate affiliates ("County" or "Covered Entity") and **Choose an item** ("Subrecipient" or "Business Associate" or "Associate"), individually, a "Party" and collectively, the "Parties" enter into this Business Associate Agreement ("BAA") as of 5/1/2021, (the "Effective Date") that addresses the HIPAA requirements with respect to "business associates", as defined under the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 16 and Part 164 ("HIPAA Rules"). A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
- 1.2 This BAA is intended to ensure that Business Associate will establish and implement appropriate safeguards for the Protected Health Information ("PHI") (as defined under the HIPAA Rules) that Business Associate may receive, create, maintain, use, or disclose in connection with the functions, activities, and services that Business Associate performs for Covered Entity. The functions, activities, and services that Business Associate performs for Covered Entity are defined in Agreement between **Choose an item** and the County (the "Underlying Agreement") for HIV services funded through the Department for HIV Elimination.
- 1.3 Pursuant to changes required under the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act") and under the American Recovery and Reinvestment Act of 2009 ("ARRA"), this BAA also reflects federal breach notification requirements imposed on Business Associate when "Unsecured PHI" (as defined under the HIPAA Rules) is acquired by an unauthorized party, and the expanded privacy and security provisions imposed on business associates.
- 1.4 Terms used but not otherwise defined in this Agreement shall have the same meaning as those definitions set forth in the terms in HIPAA and Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or "HITECH"), and in the implementing regulations of HIPAA and HITECH, now and as they may be amended in the future: **Breach, Data Aggregation, Designated Record Set, disclosure, Electronic Media, Electronic Protected Health Information ("ePHI"), Health Care Operations, individual, Individually Identifiable Health Information, Minimum Necessary, Notice of Privacy Practices, Privacy Officer, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and use.** Together HIPAA, HITECH, and their implementing regulations are referred to in this Agreement as the "Privacy Rule and the Security Rule." In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this

Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

- 1.5 A reference in this BAA to the Privacy Rule means the Privacy Rule, in conformity with the regulations at 45 C.F.R. Parts 160-164 (the "**Privacy Rule**") as interpreted under applicable regulations and guidance of general application published by the HHS, including all amendments thereto for which compliance is required, as amended by the HITECH Act, ARRA, and the HIPAA Rules.

## **2. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE**

- 2.1 Business Associate agrees not to use or disclose PHI, other than as permitted or required by this BAA or as Required By Law, or if such use or disclosure does not otherwise cause a Breach of Unsecured PHI. Except as otherwise specified in this BAA or the Underlying Agreement, Business Associate has no right to de-identify PHI or create limited data sets from PHI for its own use, or compile and/or distribute statistical analyses and/or reports using aggregated data derived from the PHI or any other health or medical information obtained from the Covered Entity.
- 2.2 Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the BAA.
- 2.3 Business Associate agrees to mitigate, to the extent practicable and at its sole expense, any harmful effect that is known to Business Associate as a result of a use or disclosure of PHI by Business Associate in violation of this BAA's requirements or that would otherwise cause a Breach of Unsecured PHI.
- 2.4 The Business Associate agrees to the following breach notification requirements:
  - a) Business Associate agrees to report to Covered Entity any Breach of Unsecured PHI not provided for by the BAA of which it becomes aware as soon as feasible, and in no event later than thirty (30) calendar days after "discovery" within the meaning of the HITECH Act. Such notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed in connection with such Breach. In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach and any other available information that Covered Entity is required to include to the individual under 45 C.F.R. § 164.404(c) at the time of notification or promptly thereafter as information becomes available. Business Associate's notification of a Breach of Unsecured PHI under this Section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA, the HIPAA Rules and related guidance issued by the Secretary or the delegate of the Secretary from time to time.
  - b) Business Associate further agrees to provide notification of any Breach of Unsecured PHI of which it becomes aware, as required under 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware, in violation of this BAA to individuals, the media (as defined under the HITECH Act), the Secretary, and/or any other parties as required under

HIPAA, the HITECH Act, ARRA, and the HIPAA Rules, subject to the prior review and written approval by Covered Entity of the content of such notification.

- c) In the event of Business Associate's use or disclosure of Unsecured PHI in violation of HIPAA, the HITECH Act, or ARRA, Business Associate bears the burden of demonstrating that notice as required under this Section 2.4 was made, including evidence demonstrating the necessity of any delay, or that the use or disclosure did not constitute a Breach of Unsecured PHI.
  - d) This section constitutes notice by the Business Associate to the Covered Entity of the ongoing existence and occurrence from time to time of Unsuccessful Security Incidents, which include but are not limited to pings and other broadcast attacks on the Business Associate's firewall, port scan, unsuccessful login attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use, or disclosure of Protected Health Information. As the Covered Entity hereby acknowledges this notice of Unsuccessful Security Incidents, no further notices are required for such events.
- 2.5 Business Associate agrees, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to require that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- 2.6 Business Associate agrees to make available PHI in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524.
- a) Business Associate agrees to comply with an individual's request to restrict the disclosure of their personal PI-II in a manner consistent with 45 C.F.R. § 164.522, except where such use, disclosure, or request is required or permitted under applicable law.
  - b) Business Associate agrees that when requesting, using, or disclosing PHI in accordance with 45 C.F.R. § 164.502(b)(1) that such request, use, or disclosure shall be to the minimum extent necessary, including the use of a "limited data set" as defined in 45 C.F.R. § 164.514(e)(2), to accomplish the intended purpose of such request, use, or disclosure, as interpreted under related guidance issued by the Secretary from time to time.
- 2.7 Business Associate agrees to make any amendments to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526.
- 2.8 Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- 2.9 Business Associate agrees to make its internal practices, books, and records, including policies and procedures regarding PHI, relating to the use and disclosure of PHI and Breach of any Unsecured PHI received from Covered Entity, or created or received by the Business Associate on behalf of Covered Entity, available to Covered Entity (or the Secretary) for the purpose of Covered Entity or the Secretary determining compliance with the Privacy Rule (as defined in Section 8).

- 2.10 To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- 2.11 Business Associate agrees to account for the following disclosures:
- a) Business Associate agrees to maintain and document disclosures of PHI and Breaches of Unsecured PHI and any information relating to the disclosure of PHI and Breach of Unsecured PHI in a manner as would be required for Covered Entity to respond to a request by an individual or the Secretary for an accounting of PHI disclosures and Breaches of Unsecured PHI.
  - b) Business Associate agrees to provide to Covered Entity, or to an individual at Covered Entity's request, information collected in accordance with this Section 2.11, to permit Covered Entity to respond to a request by an individual or the Secretary for an accounting of PHI disclosures and Breaches of Unsecured PHI.
  - c) Business Associate agrees to account for any disclosure of PHI used or maintained as an Electronic Health Record (as defined in Section 5) ("EHR") in a manner consistent with 45 C.F.R. § 164.528 and related guidance issued by the Secretary from time to time; provided that an individual shall have the right to receive an accounting of disclosures of EHR by the Business Associate made on behalf of the Covered Entity only during the three years prior to the date on which the accounting is requested directly from the Business Associate.
  - d) In the case of an EHR that the Business Associate acquired on behalf of the Covered Entity as of January 1, 2009, paragraph (c) above shall apply to disclosures with respect to PHI made by the Business Associate from such EHR on or after January 1, 2014. In the case of an EHR that the Business Associate acquires on behalf of the Covered Entity after January 1, 2009, paragraph (c) above shall apply to disclosures with respect to PHI made by the Business Associate from such EHR on or after the later of January 1, 2011 or the date that it acquires the EHR.
- 2.12 Business Associate agrees to comply with the "Prohibition on Sale of Electronic Health Records or Protected Health Information," as provided in Section 13405(d) of Subtitle D (Privacy) of ARRA, and the "Conditions on Certain Contacts as Part of Health Care Operations," as provided in Section 13406 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time.
- 2.13 Business Associate acknowledges that, effective on the Effective Date of this BAA, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and 1320d-6, as amended, for failure to comply with any of the use and disclosure requirements of this BAA and any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.

### **3. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE**

- 3.1 General Uses and Disclosures. Business Associate agrees to receive, create, use, or disclose PHI only in a manner that is consistent with this BAA, the Privacy Rule, or Security Rule (as defined in Section 5) and only in connection with providing services to Covered Entity; provided that the use or disclosure would not violate the Privacy Rule, including

45 C.F.R. § 164.504(e), if the use or disclosure would be done by Covered Entity. For example, the use and disclosure of PHI will be permitted for "treatment, payment and health care operations," in accordance with the Privacy Rule. Associate may use PHI to perform data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B); and, that any time it provides PHI received from Fulton County to a subrecipient or agent to perform Services for Fulton County, Associate first will enter into a contract with such subcontractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of PHI as contained in this Agreement.

- 3.2 Business Associate may use or disclose PHI as Required By Law; however, if Business Associate believes that it has a legal obligation not contemplated in this Agreement to disclose PHI, it will notify the Covered Entity in writing as soon as practicable after it teams of such obligation, and if the Covered Entity objects to the disclosure, Business Associate will allow the Covered Entity to exercise the legal rights or remedies Business Associate might have to object to such disclosure.
- 3.3 Business Associate agrees to make uses and disclosures and requests for PHI consistent with covered entity's Minimum Necessary policies and procedures, as may be specified in the Underlying Agreement.
- 3.4 Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.
- 3.5 Business Associate agrees to ensure that any agent, including any authorized subcontractor that creates, receives, maintains, transmits, uses, or has access to PHI in the performance of the Underlying Agreement agrees, in writing, to the same restrictions, conditions, and requirements on the use, disclosure, and safeguarding of such PHI that apply to the Business Associate in this Agreement.
- 3.6 Business Associate will appropriately inform all of its employees, agents, representatives and members of its workforce ("Associate Personnel"), whose services may be used to satisfy Associate's obligations under the Contract and this agreement of the terms of this Agreement. Associate represents and warrants that the Associate Personnel are under legal obligation to Associate, by contract or otherwise, sufficient to enable Associate to fully comply with the provisions of this Agreement. Associate will maintain a system of sanction for any Associate Personnel who violates this Agreement.

#### **4. OBLIGATIONS OF COVERED ENTITY**

- 4.1 Covered Entity shall:
  - a) Provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with the Privacy Rule, and any changes or limitations to such notice under 45 C.F.R. § 164.520, to the extent that such changes or limitations may affect Business Associate's use or disclosure of PHI.
  - b) Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI under this BAA.

- c) Notify Business Associate of any changes in or revocation of permission by an individual to use or disclose PHI, if such change or revocation may affect Business Associate's permitted or required uses and disclosures of PHI under this BAA.
- 4.2 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity, except as provided under Section 3 of this BAA.

## **5. OBLIGATIONS OF COVERED ENTITY**

- 5.1 Effective April 20, 2005, Business Associate shall comply with the HIP AA Security Rule, which shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Part 160 and Subparts A and C of Part 164, as amended by ARRA and the HITECH Act. The term "Electronic Health Record" or "EHR" as used in this BAA shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- 5.2 In accordance with the Security Rule, Business Associate agrees to:
  - a) Implement the administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures set forth at 45 C.F.R. § 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule. Business Associate acknowledges that, effective on the Effective Date of this BAA, (i.) the foregoing safeguards, policies, and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii.) Business Associate shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguards, policies, and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements;
  - b) Require that any agent, including a Subcontractor, to whom it provides such PHI agrees in writing to implement reasonable and appropriate safeguards to protect the PHI; and
  - c) Report to the Covered Entity any Security Incident of which it becomes aware.

## **6. LIABILITY**

- 6.1 Business Associate shall bear the responsibility and liability for any and all losses, expense, damage, or injury (including, without limitation, all costs and reasonable attorneys' fees) that the Indemnified Parties may sustain as a result of, or arising out of (a) a breach of this BAA by Business Associate or its agents or Subcontractors, including but not limited to any unauthorized use, disclosure, or breach of PHI, (b) Business Associate's failure to notify any and all parties required to receive notification of any Breach of Unsecured PHI pursuant to Section 2.4, or (c) any negligence or wrongful acts or omissions by Business Associate or its agents or Subcontractors, including without limitations, failure to perform Business Associate's obligations under this BAA, the Privacy Rule, or the Security Rule.
- 6.2 Notwithstanding the foregoing, nothing in this Section shall limit any rights any of the Parties may have to additional remedies under the Underlying Agreement or under

applicable law for any acts or omissions of Business Associate or its agents or Subcontractors.

## **7. TERM AND TERMINATION**

- 7.1 This BAA shall be in effect as of June 30, 2017, and shall terminate on the earlier of the date that:
- a) Either party terminates for cause as authorized under Section 7.2.
  - b) All of the PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is not feasible to return or destroy PHI, protections are extended in accordance with Section 7.3.
  - c) Either party terminates the Underlying Agreement for any reason as provided in the Underlying Agreement.
- 7.2 Upon either party's knowledge of material breach by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation; or terminate the BAA. If the breaching party does not cure the breach or end the violation within a reasonable timeframe not to exceed thirty (30) days from the notification of the breach, or if a material term of the BAA has been breached and a cure is not possible, the non-breaching party may terminate this BAA and the Underlying Agreement, upon written notice to the other party.
- 7.3 Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
- a) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.
  - b) Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the remaining PHI that the Business Associate still maintains in any form.
  - c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section 7, for as long as Business Associate retains the PHI.
  - d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at paragraphs (2) and (3) above [under "Specific Other Uses and Disclosures"] which applied prior to termination.
  - e) Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **8. RIGHT TO INJUNCTIVE RELIEF**

- 8.1 Business Associate expressly acknowledges and agrees that the breach, or threatened breach, by it of any provision of this Agreement may cause the Covered Entity to be irreparably harmed and that the Covered Entity may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, the Covered Entity will be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a

bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to the Covered Entity at law or in equity.

**9. MISCELLANEOUS**

- 9.1 The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, ARRA, the HITECH Act, the HIPAA Rules, and any other applicable law.
- 9.2 The respective rights and obligations of Business Associate under Section 6 and Section 7 of this BAA shall survive the termination of this BAA.
- 9.3 This BAA shall be interpreted in the following manner:
  - a) Any ambiguity shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIP AA Rules.
  - b) Any inconsistency between the BAA's provisions and the HIPAA Rules, including all amendments, as interpreted by the HHS, court, or another regulatory agency with authority over the Parties, shall be interpreted according to the interpretation of the HHS, the court, or the regulatory agency.
  - c) Any provision of this BAA that differs from those required by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this BAA.
- 9.4 This BAA constitutes the entire agreement between the parties related to the subject matter of this BAA, except to the extent that the Underlying Agreement imposes more stringent requirements related to the use and protection of PHI upon Business Associate. This BAA supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provision of this BAA, or part thereof, is found to be invalid, the remaining provisions shall remain in effect.
- 9.5 This BAA will be binding on the successors and assigns of the Covered Entity and the Business Associate. However, this BAA may not be assigned, in whole or in part, without the written consent of the other party. Any attempted assignment in violation of this provision shall be null and void.
- 9.6 This BAA may be executed in two or more counterparts, each of which shall be deemed an original.
- 9.7 Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the laws of Georgia.

SIGNATURES FOLLOW



IN WITNESS WHEREOF, the parties hereto have executed this Business Associate Agreement as of the date first above written.

**COVERED ENTITY:**  
**FULTON COUNTY, GEORGIA**

By: \_\_\_\_\_  
Robert L. Pitts, Chairman  
Board of Commissioners

\_\_\_\_\_ Date

Attest: \_\_\_\_\_ ITEM: \_\_\_\_\_ DATE: \_\_\_\_\_  
Tonya Grier,  
Fulton County Clerk to the Commission

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the County Attorney

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Agency Name