

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between _____ (the “Business Associate”), and **SWEDISH COVENANT HOSPITAL**, an Illinois not for profit corporation (“SCH”) (each a “Party” and collectively the “Parties”).

Recitals

1. The U.S. Department of Health and Human Services (“HHS”) has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health (HITECH) Act (collectively, the “HIPAA Rules”).
2. The HIPAA Rules require that SCH enter into this Agreement with Business Associate in order to protect the privacy and security of “Protected Health Information” (“PHI”).
3. Business Associate and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their obligations to SCH pursuant to either an existing or contemporaneously executed agreement for services (“Service Agreement”).
4. The Parties desire to enter into this Agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **Definitions**

1.1 Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: breach, data aggregation, disclosure, health care operations, individual, minimum necessary, Protected Health Information, required by law, Secretary, security incident, subcontractor, unsecured protected health information, and use.

1.2 Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Business Associate.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean SCH.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. **Use and Disclosure of PHI to Provide Services.** The Business Associate will not use or further disclose PHI other than as permitted or required by the terms of the Service Agreement or as required by law. Except as otherwise provided in this document or prohibited under the HIPAA Rules, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the applicable Service Agreement. All other uses not authorized by this Agreement are prohibited.
3. **Additional Business Associate Activities.** Except as otherwise provided in this Agreement, the Business Associate may also:
 - (a) Use the PHI in its possession for its proper management and administration and/or to fulfill any present or future legal responsibilities of the Business Associate, provided that such uses are permitted under state and federal confidentiality laws.
 - (b) Disclose the PHI in its possession for the purpose of its proper management and administration and/or to fulfill any present or future legal responsibilities of the Business Associate. Business Associate represents to SCH that (i) any disclosure it makes will be permitted under applicable laws, and (ii) the Business Associate will obtain reasonable written assurances from any person to whom the PHI will be disclosed (except a person to whom the Business Associate is required by law to disclose PHI) that the PHI will be held confidentially and used or further disclosed only as required and permitted under the HIPAA Rules and other applicable laws, that any such person agrees to be governed by the same restrictions and conditions contained in this Agreement, and that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
 - (c) [THIS SECTION APPLIES ONLY TO BUSINESS ASSOCIATES WHICH PROVIDE DATA AGGREGATION SERVICES.] Bring together SCH’s PHI in Business Associate’s possession with the PHI of other covered entities that the Business Associate has in its possession through its capacity as a Business Associate to such other covered entities, provided that the purpose of bringing the PHI information together is to provide SCH with data analyses relating to its Healthcare Operations, as such term is defined in the HIPAA Rules. The Business Associate will not disclose the PHI obtained from SCH to another covered entity without written authorization from SCH.
 - (d) De-identify any and all PHI provided that the de-identification conforms to the requirements of applicable law as provided for in 45 C.F.R. § 164.514(b) and that Business Associate maintains such documentation as required by applicable law, as provided for in 45 C.F.R. § 164.514(b). The Parties

understand that properly de-identified information is not PHI under the terms of this Agreement.

4. **Business Associate Covenants.** Business Associate agrees to:
- (a) use or disclose only the minimum necessary PHI in performing the activities called for under the Service Agreement;
 - (b) not to use or further disclose PHI except as permitted under this Agreement, the HIPAA Rules, and applicable State law, each as amended from time to time;
 - (c) use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement;
 - (d) (if the Business Associate creates, receives, maintains or transmits PHI using electronic media) to implement administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI;
 - (e) report to SCH's Privacy Officer any use or disclosure of the PHI not permitted by this Agreement, any security incident affecting electronic PHI, and any breach of unsecured PHI within five (5) days of the Business Associate becoming aware of such use or disclosure;
 - (f) ensure that any subcontractors or agents create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to the PHI;
 - (g) maintain the integrity of any PHI transmitted by or received from SCH;
 - (h) comply with SCH policies and procedures with respect to the privacy and security of PHI and other SCH records, as well as policies and procedures with respect to access and use of SCH's equipment and facilities;
 - (i) provide the rights of access, amendment, and accounting as set forth in **Sections 6, 7 and 8;** and
 - (j) to the extent that the Business Associate is to carry out one or more of SCH's obligations as a covered entity under Subpart E of 45 C.F.R. Part 164, the Business Associate shall comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligations.
5. **SCH Covenants.** SCH agrees to notify Business Associate of material restrictions on the use or disclosure of PHI of individual patients agreed to by SCH, if any.

6. **Access to PHI.** If any patient requests access to PHI directly from the Business Associate, the Business Associate shall, within five (5) days, forward such request to SCH.
7. **Amendment of PHI.** SCH is required to consider patients' requests to amend their PHI. If SCH grants a patient's request to amend his/her PHI, and the PHI may previously have been provided to the Business Associate, SCH will notify the Business Associate of the amendment. Within ten (10) days of receipt of a request from SCH for the amendment of patient's PHI, the Business Associate shall, as required by 45 C.F.R. § 164.526, incorporate any such amendments in the PHI.
8. **Accounting for Disclosures of PHI.** Within thirty (30) days of notice by SCH to the Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual, the Business Associate shall make available to SCH such information as is in the Business Associate's possession and is required for SCH to make the accounting required by 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within five (5) days, forward the request to SCH. It shall be SCH's responsibility to prepare and deliver any such accounting requested.
9. **Access to Books and Records Regarding PHI.** The Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, SCH available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining SCH compliance with the HIPAA Privacy Rule.
10. **Disposition of PHI Upon Termination.** The Business Associate will, at termination or expiration of the Services Agreement, if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of, SCH which the Business Associate and/or its subBusiness Associates or agents still maintain in any form, and will not retain any copies of such information. If such return or destruction is not feasible, the Business Associate will notify SCH of such event in writing, and will therefore extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI not feasible.
11. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party:
 - (a) that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations described in this Agreement, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other

actions and that such performance will not violate any provision of any organizational charter or bylaws.

- (b) that neither the execution of this Agreement, nor its performance, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance.
 - (c) that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement.
 - (d) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.
12. **Term.** Unless otherwise terminated as provided in **Section 13**, this Agreement shall become effective when signed by both parties and shall have a term that shall run concurrently with that of all relevant Services Agreement(s).

13. **Termination**

- 13.1. Generally. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of all relevant Services Agreement(s); provided, however, certain provisions and requirements of this Agreement shall survive such expiration or termination in accordance with **Section 14**.
- 13.2. Termination by SCH. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), SCH may immediately terminate this Agreement, all relevant Services Agreement(s) and any related agreements if SCH makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of SCH, SCH may choose to provide Business Associate with written notice of the existence of the breach and provide Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, Business Associate shall cure said breach to the satisfaction of SCH within an additional fifteen (15) days. Failure by Business Associate to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by SCH. If termination is not feasible, SCH has the right to report the problem to the Secretary of the U.S. Department of Health and Human Services.

- 13.3. Termination by the Business Associate. If Business Associate determines that SCH has breached a material term of this Agreement, then the Business Associate shall provide SCH with written notice of the existence of the breach and shall provide SCH with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, SCH shall cure said breach to the satisfaction of the Business Associate within an additional fifteen (15) days. Failure by SCH to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by the Business Associate.
14. **Effect of Termination.** Upon termination pursuant to **Section 13**, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy all PHI, the Business Associate will notify SCH in writing. Such notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI not feasible. If it is not feasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to SCH and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI not feasible.
15. **Indemnification.** To the limits of its insurance, the Business Associate shall indemnify, hold harmless and defend (if requested by SCH) SCH and its officers, directors and employees (all of the foregoing collectively referred to as the "Indemnitees") from and against any and all liabilities, costs, expenses and damages, including attorneys' fees, actually and necessarily incurred by or imposed on any of the Indemnitees in connection with or resulting from any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, or any appeal thereon, with which an Indemnitee may be or become involved or with which an Indemnitee may be threatened, as a party or otherwise, as a direct or indirect result of any actions or omissions of the Business Associate, its agents or subcontractors, including failure to perform its obligations under this Agreement, or as a result of Business Associate's negligence or willful misconduct in its performance of its duties under this Agreement.

16. **Complete Agreement; Amendments; Waiver.** This Agreement and the Service Agreement(s) constitute the complete agreement between SCH and the Business Associate, and supersede any and all prior agreements, negotiations and understandings. This Agreement may not be modified, nor shall any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or the right of either Party thereafter to enforce each and every such provision.
17. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to give, nor shall anything herein give any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
18. **Notices.** Any notice required or permitted under this Agreement shall be given in writing and delivered by hand, via a nationally recognized overnight delivery services (e.g., Federal Express), or via registered mail or certified mail, postage pre-paid and return receipt requested, to the following:

SCH: Swedish Covenant Hospital
 5145 N. California Ave.
 Chicago, IL 60625-3642
 Attn: General Counsel

Business Associate: _____

 Attn: _____

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above.

19. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

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INTENDING TO BE LEGALLY BOUND, the Parties hereto have duly executed this Agreement as of the Effective Date.

Swedish Covenant Hospital

Business Associate

Signed: _____

Signed: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____