

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between \_\_\_\_\_ (“Business Associate”) and Munson Healthcare (defined as Munson Healthcare’s subsidiaries and affiliate Kaskaskia Memorial Health Center) (collectively referred to as “Munson”). This Agreement applies to all services and relationships between Munson and Business Associate under which Business Associate performs functions or activities that involve Use or Disclosure of PHI (as defined below) on behalf of, or while providing services to, Munson (the “Underlying Agreement”).

- A. HIPAA and HITECH Compliance.** Business Associate will comply with its obligations under this Agreement and with all obligations of a business associate under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (found in Title XIII of the American Recovery and Reinvestment Act of 2009), and their associated regulations (“HIPAA” and “HITECH”). In the event of a conflict or inconsistency between this Agreement and the requirements of HIPAA or HITECH, HIPAA or HITECH, as applicable, will control. In the event of a conflict or inconsistency between the terms of any other agreement between the parties and this Agreement, this Agreement controls. All capitalized terms used in this Agreement and not otherwise defined in this Agreement are as defined by HIPAA or HITECH.
- B. Protected Health Information.** For purposes of these obligations, “PHI” means all Protected Health Information in Business Associate’s possession or under its control (e.g., agents) which is collected, created or received by Business Associate or its agents from or on behalf of Munson.
- C. Permissible Uses and Disclosures of PHI.**
1. Use and Disclosure of PHI. Business Associate may Use or make a Disclosure of PHI only as permitted by this Agreement to directly perform services under the Underlying Agreement, or, as otherwise Required by Law.
  2. Internal Management. Business Associate may use PHI for internal management and administration of Business Associate.
  3. Minimum Necessary. Business Associate is permitted to access and use only the minimum necessary PHI to the extent required to perform its duties under the Underlying Agreement. Business Associate agrees not to use or store PHI if the information can be removed and is not essential to the services to be provided.
  4. Data Aggregation. Business Associate is permitted to use PHI for data aggregation for the health care operations of Munson as permitted by the Underlying Agreement, or, otherwise upon the written request of Munson.
  5. De-Identified PHI. Business Associate agrees not to use data that identifies Munson or PHI for its own purposes or for the benefit of its other customers, including de-identified PHI, except as permitted by the Underlying Agreement, or otherwise as permitted by Munson’s prior written consent.
- D. Employees, Subcontractors, Agents and Disciplinary Action.**
1. Acts / Omissions. Business Associate is responsible for all actions and/or omissions by its employees, Subcontractors and agents and is liable to third parties and Munson for any violation of patients’ privacy or security by any person who is granted access by or receives data through Business Associate.
  2. Employees, Agents, and Subcontractors. Business Associate agrees to instruct its employees, Subcontractors and agents regarding the confidentiality, privacy and security of PHI and to ensure that any of its employees, Subcontractors and agents that create, receive, maintain, or transmit PHI agree in writing to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI, and in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2). Business Associate will not disclose to its employees, Subcontractors and agents or permit them to access, view, obtain copy, review or use any PHI that is not necessary to their services to Munson.
  3. Administrative and Disciplinary Action. Business Associate agrees to maintain strict performance standards, including disciplinary actions, with respect to wrongful access to, copying, viewing, misuse or disclosure of PHI (including a Breach or Security Incident) by its employees, Subcontractors, and agents.

4. Notice of Access Change. Business Associate will promptly notify Munson if any of its employees, Subcontractors, or agents who have access to a Munson information system, or a network connection or application no longer requires such access for Business Associate to perform under the Underlying Agreement.
5. Monitoring. Business Associate will monitor the appropriateness of the activities of its employees, Subcontractors, and agents within Munson information systems and/or networks. Business Associate will promptly provide Munson with documentation of such monitoring upon Munson's request.

**E. Additional Obligations of Business Associate.**

1. Information Blocking. Business Associate will not engage in any practice that, if done by Munson or Business Associate, would constitute information blocking as defined in the Information Blocking regulations at 45 CFR Part 171 (as may be amended from time to time).
2. PHI.
  1. Business Associate will make PHI available to Munson in the format requested by Munson within three (3) calendar days of Munson's request.
  2. If Business Associate is unable to make PHI available in the requested format, Business Associate will notify Munson within two (2) calendar days of receipt of the request and will work with Munson to identify reasonable alternative formats to provide the requested PHI. Business Associate will provide the PHI in the alternative format selected by Munson within three (3) calendar days.
3. Safeguards. Business Associate agrees to implement appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of PHI. Business Associate agrees to implement appropriate electronic security practices for PHI, which is transmitted, stored, received, or used in electronic form, in compliance with Subpart C of 45 CFR Part 164, to prevent use or disclosure of PHI other than as permitted by this Agreement.
4. Handling PHI. Business Associate agrees to return or destroy PHI that is erroneously provided to Business Associate. Business Associate agrees to provide notice to Munson within five (5) business days of receipt of such PHI.
5. Notice of Disclosure Request. Unless the Underlying Agreement permits Business Associate to respond directly to a Disclosure request, Business Associate will notify Munson in writing within three (3) calendar days of a Disclosure request and will only make a Disclosure of PHI with Munson's express written consent unless such Disclosure is Required by Law.
6. Accounting of Disclosures. Business Associate will notify Munson within three (3) calendar days if an Individual contacts Business Associate requesting an accounting of Disclosures. Within five (5) calendar days of a such request from Munson, Business Associate will make available the information required to provide an accounting of Disclosures to Munson as necessary for Munson to satisfy its obligations under 45 CFR 164.528.
7. Amendments. Business Associate will notify Munson within three (3) calendar days if an Individual contacts Business Associate requesting an amendment to PHI. Business Associate will make PHI available for amendment and, if instructed by Munson, incorporate an amendment to PHI in accordance with 45 CFR 164.526.
8. Subpart E Compliance. To the extent Business Associate is to carry out one or more of Munson's obligations under Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of Subpart E that apply to Munson in the performance of such obligations.
9. Geographic Limitations on Data. Business Associate represents and warrants that in its provision of services to Munson pursuant to the Underlying Agreement, except as otherwise permitted by Munson's Chief Information Security Officer (or their designee) in writing, Business Associate will limit the flow of, and access by Business Associate and any of Business Associate's employees, agents or Subcontractors to, PHI to the geographic limits of the United States of America.

**F. Breach Investigation and Notification.**

1. Risk Assessment. Upon receipt of a report of an actual or suspected Breach or Security Incident from Business Associate, Munson will determine whether a risk assessment should be conducted, and if so, which party is the appropriate party to conduct the risk assessment. Business Associate will comply with all requests and directives of Munson in this regard.
2. Breach Notification. If a risk assessment is conducted and it is determined that a Breach has occurred, Munson will determine the appropriate party to notify the affected Individuals, the Department of Health and Human Services, and if necessary, the media. If it is determined that

Business Associate is the appropriate party to prepare and issue the notice, then Business Associate will do so at its sole cost and within the time period specified by HIPAA. Business Associate will provide Munson with a draft copy of the Breach notification letter that meets the requirements of 45 CFR 164.404, 164.406, or 164.408, as applicable, for Munson's review and approval at least ten (10) days in advance of the deadline. No Breach notification letter will be issued without Munson's written approval. In the event that Munson has reasonable cause to anticipate that Business Associate is not sufficiently performing its obligations under this paragraph, then Munson may, in its sole discretion, take over these obligations and invoice Business Associate for its costs associated with performing these obligations.

**G. Security, Reporting, Mitigation and Termination.**

1. Notice of Breach or Security Incident. Business Associate will report to Munson within twenty-four (24) hours of becoming aware of an actual or suspected Use or Disclosure of PHI not provided for by this Agreement, including Breaches of Unsecured PHI and any Security Incident. The content of the report will comply with 45 CFR 164.410(c).
2. Suspension and Termination. Munson, in its sole discretion, may immediately suspend or terminate Business Associate's employee's, agent's or Subcontractor's access or connection to Munson's information systems and/or network in the event of Business Associate's improper use of Munson's information system and/or network connection or Business Associate's failure to maintain the confidentiality of PHI or patient privacy or failure to safeguard and protect the security of Munson's information systems and/or network connection.

**H. Termination of Relationship for Failure to Comply.**

1. Termination of this Agreement.
  - a. Immediate Termination and Cure. Munson may immediately terminate this Agreement upon written notice to Business Associate without cost or penalty if Munson determines that Business Associate has violated a material requirement related to HIPAA and/or HITECH. Munson, within its sole discretion, has the right to take reasonable steps to cure the breach and/or may (a) allow Business Associate to take steps to cure the breach, and (b) in the event of such a cure, elect to keep the relationship in force.
  - b. Immediate Termination. Munson may immediately terminate this Agreement if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or (ii) there is a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.
2. Termination of Other Agreements. If this Agreement is terminated, Munson may, without cost or penalty, terminate the Underlying Agreement or any portion of the Underlying Agreement which involves the collection, creation, or receipt of PHI by Business Associate. This provision will supersede any termination provision to the contrary which may be set forth in the Underlying Agreement.
3. PHI Obligations upon Termination. Unless Business Associate is Required by Law to maintain PHI, Business Associate will return or destroy (and not retain any copies of) all PHI in its possession or under its control within thirty (30) days after the termination/expiration of this Agreement. If Business Associate is unable to return or destroy PHI, then Business Associate will provide written notice to Munson of the reasons for being unable to return or destroy PHI and must, at a minimum, maintain PHI as required by this Agreement and HIPAA and/or HITECH for so long as the PHI exists. Business Associate will not transfer possession of PHI without prior written approval of Munson. If at any time Business Associate determines it is unable to protect PHI, Business Associate will destroy all PHI and all copies and maintain proof of such destruction. Business Associate's obligations under this paragraph will survive the termination of this Agreement.

**I. Notices.**

All notices and reports required to be provided to Munson under this Agreement will be provided in writing to the following:

Munson Privacy Officer: [privacyofficer@mhc.net](mailto:privacyofficer@mhc.net)

Munson Chief Information Security Officer: [informationsecurityofficer@mhc.net](mailto:informationsecurityofficer@mhc.net)

All notices and reports required to be provided to Business Associate under this Agreement will be provided in writing to the email address identified in the signature block below.

Email copy to [informationsecurityofficer@mhc.net](mailto:informationsecurityofficer@mhc.net) for review and Munson Signature

**J. Amendment.**

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 HIPAA and/or HITECH and any other applicable law.

**K. Access for Audit.**

1. Business Associate will make its internal practices, books and records relating to the use and disclosure of any PHI available to Munson, the Secretary of the Department of Health and Human Services, and to other authorized government investigators for purposes of determining Business Associate's and Munson's compliance with HIPAA.
2. Business Associate agrees that Munson has the right to audit, investigate, monitor, access, review and report on Business Associate's use of any PHI, with or without advance notice or knowledge from Munson.
3. Business Associate agrees that upon written request from Munson, and not more than once annually, Business Associate will respond to a written questionnaire about Business Associate's internal practices, books and records and Business Associate's use of any PHI.

**L. Assignment.**

Business Associate may not assign any rights, nor may it delegate or subcontract its duties, under this Agreement without Munson's express written consent. Business Associate agrees to make a list of Subcontractors available to Munson upon request.

**M. Laws.**

Business Associate will comply with all federal and state security and privacy laws applicable to Business Associate.

**N. Injunctive Relief.**

Business Associate acknowledges and stipulates that its, including its agents and/or subcontractors, unauthorized use or disclosure of PHI while performing services pursuant to the Underlying Agreement may cause irreparable harm to Munson, and in such event, Munson will be entitled, if it so elects, to institute any type of proceeding in any court of competent jurisdiction in equity, to seek injunctive relief.

Authorized representatives of the parties have executed this Agreement to be effective as of the last day written below.

MUNSON

BUSINESS ASSOCIATE

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Email (Section I): \_\_\_\_\_