Business Associate Agreement

Updated: January 03, 2018

This Business Associate Agreement (the "Agreement") is made and entered into effective as of _____, by and between One Health Record®, also known as the Alabama Health Information Exchange (hereinafter referred to as "AHIE" or "Business Associate") and the Participant ("Participant" or "Covered Entity") (collectively the "Parties").

WHEREAS, the Parties have entered a Participation Agreement (the "Underlying Agreement") pursuant to which the Parties provides certain services to one another and, in connection with those services, the Parties disclose certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009 ("HITECH"), and its attendant regulations and guidance;

WHEREAS, the Parties desire to comply with all applicable federal standards for the privacy and electronic security of PHI of patients of Participant;

NOW, THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, the Parties enter into this Business Associate Agreement to provide a full statement of their respective responsibilities. In consideration of the mutual promises below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

Terms used in this Agreement that are specifically defined in HIPAA shall have the same meaning as set forth in HIPAA at 45 CFR 160.103 and 164.501, and the final omnibus rule issued on January 17, 2013, and effective March 26, 2013. A change to HIPAA which modifies any defined HIPAA term or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement. The definitions set forth in the AHIE Policy Manual, as amended from time to time, shall apply to the terms used in this Agreement, to the extent not otherwise defined in HIPAA.

2. BUSINESS ASSOCIATE OBLIGATIONS

2.1 Business Associate agrees that it is directly liable for compliance with both the Privacy and Security Rule under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009 ("HITECH"), and its attendant regulations and guidance.

2.2 Business Associate acknowledges that it will maintain compliance documents required under applicable HIPAA rules.

2.3 Business Associate agrees that it shall only use and disclose PHI as allowed by and in order to perform the terms of this Agreement or the Underlying Agreement, or as is Required By Law.

2.4 Business Associate is not an agent of the Covered Entity.

2.5 Business Associate will ensure and obtain satisfactory assurances in the form of an executed business associate agreement that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of the Business Associate on behalf of Covered Entity agrees to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information and do not export PHI beyond the borders of the United States of America, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable. Business Associate shall, upon knowledge of a material breach by a subcontractor of the subcontractor's obligations under its contract with Business Associate, either notify such subcontractor of such breach and provide an opportunity for subcontractor to cure the breach within a 5 business day period; or, in the event subcontractor fails to cure such breach or cure is not possible, Business Associate shall terminate the contract with subcontractor. Upon request, Business Associate shall provide the applicable Party with a copy of the written agreement or contract entered into by Business Associate and its subcontractor to meet the obligations of Business Associate under this section.

2.6 Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI other than as provided by this Agreement, and to implement administrative, physical, and technical safeguards as required by Subpart C Part 164 of title 45, Code of Federal Regulations, and HITECH in order to protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Participant. See HITECH § 13401.

2.7 The additional requirements of Title XIII of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference are hereby incorporated into this Agreement.

2.8 Business Associate agrees to adopt the technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH §§ 13401-13402.

2.9 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 and to notify the applicable Party of any breach of unsecured PHI, as required under HITECH § 13402.

2.10 During the term of this Agreement, Business Associate shall pay direct costs and notify the applicable Party promptly, and without unreasonable delay, of any suspected or actual Security Incident or breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations, or any legal action against Business Associate arising from an alleged HIPAA violation. Business Associate shall take (i) prompt action to correct any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

2.11 Business Associate shall report, in writing, to the applicable Party any use or disclosure of PHI that is not authorized by the Agreement. Such written notice shall be provided to the applicable Party without unreasonable delay and in no event more than five days after Business Associate becomes aware, or should have become aware by exercising reasonable diligence, of such use or disclosure. [45 C.F.R. § 164.410].

2.12 Business Associate acknowledges that Business Associate is subject to applicable provisions of 45 C.F.R. Part 164, Subpart D. In addition to its required notification to the Individual, HHS, and media (as appropriate) under the law, Business Associate further acknowledges that Business Associate shall, following the discovery of a breach of Unsecured PHI, notify the applicable Party of such breach as such is required under 45 C.F.R. § 164.410(a)(1). For purposes of this Section 2.10, "breach" has the meaning provided at 45 C.F.R. §164.402. Breaches shall be treated as discovered by Business Associate as provided under 45 C.F.R. § 164.410(a)(2). Business Associate shall provide notification of a Breach of Unsecured PHI to the applicable Party without unreasonable delay and in no event more than sixty days after discovery of a breach (discovery of a breach is defined as the first day on which the breach is known or by exercising reasonable diligence would have been known). The notification shall include, to the extent possible, the date of the breach, the nature of the breach, and the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, or disclosed during the breach. Business Associate shall also provide any other available information that is required for the applicable Party to include in the notification of the individual as provided at 45 C.F.R. §164.404(c) at the time provided for notifying the applicable Party of the breach as provided in this Section 2.12 or promptly thereafter as such information becomes available.

2.13 Pursuant to the Security Rule requirements, Business Associate agrees to implement a mechanism to encrypt electronic PHI, or if implementing encryption is not reasonable and appropriate, document the reason for that determination and implement an equivalent alternative measure that is reasonable and appropriate under the circumstances.

2.14 To the extent that Business Associate maintains any PHI in Designated Record Sets, Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its agents or subcontractors, if any, available to the applicable Party for inspection and copying within five days of a request by the applicable Party to enable the applicable Party to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and 164.526.

2.15 To the extent that Business Associate maintains any PHI in Designated Record Sets, within thirty (30) calendar days of receipt of a request from the applicable Party for an amendment of PHI or a record about an Individual maintained in a Designated Record Set, Business Associate or its agents or subcontractors, if any, shall make such PHI available to the applicable Party for amendment and shall incorporate any such amendment to enable the applicable Party to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524. If an Individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, if any, Business Associate must notify the applicable Party in writing within thirty (30) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors, if any, shall be the responsibility of the Participant. Upon the approval of Participant, Business Associate shall appropriately amend the PHI maintained by it, or any agents or subcontractors.

2.16 Business Associate agrees to document any disclosures of PHI, and any information related to such disclosures, as would be required for the applicable Party to respond to a request by an individual for an accounting of disclosures of the PHI in accordance with 45 C.F.R. §164.528 and, if required by and upon the effective date of, Section 13405(c) of HITECH and related regulatory guidance. Within thirty (30) days of notice by the applicable Party of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to the applicable Party the information required to provide an accounting of disclosures to enable the applicable Party to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and, if required by and upon the effective date of, Section 13405(c) of HITECH and related regulatory guidance. If the request for an accounting pursuant to 45 CFR §164.528 and, if required by and upon the effective date of, Section 13405(c) of HITECH and related regulatory guidance is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within five business (5) days of a request notify Participant about such request. Participant shall either inform Business Associate to provide such information directly to the Individual, or it shall request the information to be immediately forwarded to Participant for compilation and distribution to such Individual. Business Associate shall not disclose any PHI unless such disclosure is Required by Law or is in accordance with this Agreement. Business Associate shall document such disclosures. Notwithstanding Section 4.4, Business Associate and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this Section 2.16 for a period of six (6) years after termination of the Agreement.

2.17 Business Associate shall make its internal practices and records relating to the use and disclosure of PHI available to the Secretary or Covered Entity for purposes of determining the applicable Party's compliance with the Privacy Rule within 5 business days of a request. Business Associate shall notify the applicable Party regarding any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary, and upon request by Participant, shall provide Participant with a duplicate copy of such PHI.

2.18 Business Associate and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary. See HITECH § 13405.

2.19 Business Associate acknowledges that Business Associate has no ownership rights related to the PHI. Covered Entity holds all right, title, and interest in PHI.

2.20 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to the applicable Party as permitted by 45 CFR §164.504(e)(2)(i)(B).

2.21 Business Associate shall notify the applicable Party of any requests by individuals received by Business Associate that include a request for access to, or amendment of, PHI. Business Associate shall promptly forward any such individual requests received directly by the Business Associate to the applicable Party's Chief Privacy Officer. Participant shall be responsible for responding, or objecting, to all such individual requests in accordance with Participant's HIPAA privacy policies that address an individual's right to request access to, amendment of, or an accounting of disclosures of PHI. Business Associate shall cooperate and provide available information related to the use and disclosure of Protected Health Information to the extent required (within 30 days) by Participant to comply with such Participant policies.

2.22 If Business Associate knows of a pattern of activity or practice by the applicable Party that constitutes a material breach or violation of the Participant's obligations under this Agreement, Business Associate will take reasonable steps to notify Participant of the breach and seek Participant's cure of the breach or resolution of the violation. If all such steps are unsuccessful within a period of thirty (30) days, Business Associate will either: (1) terminate the Agreement, if feasible; or (2) report the problem to the Secretary.

2.23 Business Associate agrees that any PHI transmitted electronically and/or stored on any type of mobile media, including lap top computers, tablet computers, smart phones, etc., must be encrypted, and that information stored whether intentional or not is subject to HIPAA Rules provisions for Business Associates.

2.24 Business Associate agrees, to the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, it will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.25 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person or organization to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or organization, and the person or organization notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.26 Business Associate is not authorized to de-identify in accordance with 45 CFR 164.514(a)-(c), PHI received by Business Associate by or on behalf of Covered Entity; nor is Business Associate authorized to use de-identified information received from Covered Entity for a purpose not authorized by this Agreement, except with the prior written consent of the Covered Entity.

2.27 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the requirements of 45 CFR 164.502(b) and 164.514(d).

3. COVERED ENTITY OBLIGATIONS

3.1 Covered Entity shall provide AHIE with the notice of any privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

3.2 Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

3.3 Covered Entity shall notify Business Associate of any PHI that is subject to any arrangements permitted or required of Covered Entity under the Privacy Rule that may materially impact in any manner the use and/or disclosure of PHI by Business Associate under this Agreement, such as changes in, or revocation of, the permission by an Individual to use and disclose his or her PHI as provided for in 45 CFR 164.522 and agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.4 Covered Entity shall not request AHIE to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except if there is a written agreement by Covered Entity and Business Associate for the Business Associate to use or disclose PHI for data aggregation or management and administrative and legal responsibilities of the Business Associate..

3.5 Covered Entity agrees to provide or deliver PHI that is minimally necessary to enable the Business Associate to meet its obligations under the Underlying Agreement.

4. LIABILITY

Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employee or agents, in connection with the performance of services pursuant to this Agreement, including the AHIE Policy Manual.

5. TERMINATION

5.1 Term. The obligations set forth in this section shall be effective as of the date the first PHI is released to Business Associate pursuant to this Agreement, and shall terminate only when all of the PHI provided by Covered Entity to Business Associate, or created or 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.

5.2 Termination for Cause. Upon Covered Entity's knowledge of a violation of a term of this Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure or end the violation. Covered Entity may terminate this Agreement if Business Associate does not cure or end the violation within the time specified by Covered Entity.

5.3 Obligations of Business Associate Upon Termination. Except as otherwise agreed to in the Underlying Agreement, upon termination of this Agreement 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 which 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 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, 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 in Section II of this Agreement which applied prior to termination; and

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.

5.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. MISCELLANEOUS

6.1 A reference in this Agreement to a section in the Privacy Rule means the Privacy Rule section as in effect or as amended.

6.2 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Participant, Business Associate, or their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

6.3 The Parties are independent contractors and nothing in this Agreement shall be deemed to make them partners or joint venturers.

6.4 If any modification to this Agreement is Required By Law or required by HITECH or any other federal or state law affecting this Agreement, or if an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Business Associate and Participant will negotiate in good faith to amend this Business Associate Agreement to remain in compliance with all applicable laws and regulations.

6.5 Business Associate will comply with all appropriate federal and state security and privacy laws, to the extent that such laws apply to Business Associate or are more protective of Individual privacy than are the HIPAA laws.

6.6 All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by registered or certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below:

If to AHIE:

Alabama Medicaid Agency
501 Dexter Avenue
Montgomery, Alabama 36130

If to Participant:

_____

_____

_____

_____

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

6.7 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

6.8 This Agreement contains the entire understanding between the Parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default.

6.9 This Agreement shall be governed by Alabama law without respect to its conflict of law principles.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

One Health Record (AHIE)	**PARTICIPANT**
Signature: Gary D . Parker	Type Signature: _____
Title: Director One Health Record	Title:_____

Email to One Health Record®

By typing your name here, you are signing this application electronically. You agree your electronic signature is the legal equivalent of your manual signature on this application.