north country healthcare

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made as of this _____ day of _____, 20____, by and between North Country Healthcare, Inc. ("Covered Entity"), and _____ ("Business Associate").

WHEREAS, the Covered Entity has engaged the Business Associate to perform services for the Covered Entity and/or one of its affiliates (Androscoggin Valley Hospital, North Country Home Health and Hospice Agency, Upper Connecticut Valley Hospital, and Weeks Medical Center) as described in the underlying agreement between them (the "Services Agreement"); and

WHEREAS, pursuant to the Services Agreement, the Covered Entity may disclose Protected Health Information to the Business Associate and the Business Associate may receive, use, disclose, transmit, store and/or maintain such Protected Health Information in its performance of services for the Covered Entity; and;

WHEREAS, the Covered Entity and the Business Associate intend to comply with all applicable federal and state laws governing the privacy of Protected Health Information, including but not limited to: (1) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (2) the HIPAA Privacy Regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and E; (2) the HIPAA Security Regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and C; (3) the Transactions and Code Set Standards set forth at 45 C.F.R. Part 162; (4) the Health Information Technology for Economic and Clinical Health Act; and (5) the New Hampshire Right to Privacy Law, codified at RSA Chapter 359-C:19-21;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

Section 1. Definitions

(a) "Protected Health Information" shall have the same meaning as set forth in the HIPAA Privacy Regulations, and is recognized by the parties to include both (1) Electronic Protected Health Information; and (2) Personal Information as that term is defined in the New Hampshire Right to Privacy Law.

(b) Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Regulations and HIPAA Security Regulations.

Section 2. Obligations and Activities of Business Associate

Business Associate agrees to:

(a) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;

(b) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;

(c) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

(d) immediately report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, with such reports including at least the following information:

(1) the identity of each individual whose information was accessed, acquired or disclosed during the improper use or disclosure;

(2) a brief description of what happened;

(3) the date of the improper use or disclosure and the date of its discovery;

(4) the nature of the Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.);

(5) any steps individuals should take to protect themselves from potential harm resulting from the improper use or disclosure; and

(6) a brief description of what the Business Associate is doing to investigate the improper use or disclosure, to mitigate harm to individuals, and to protect against any further incidents;

(e) in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(f) make available to Covered Entity Protected Health Information in a Designated Record Set as necessary to allow Covered Entity to satisfy its obligations under 45 C.F.R. §164.524 to provide Individuals with access to their Protected Health Information;

(g) make available to Covered Entity Protected Health Information in a Designated Record Set for amendment and incorporate any amendments made by Covered Entity in accordance with 45 C.F.R. § 164.526;

(h) make available to Covered Entity the information required to allow Covered Entity to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. This

provision shall survive termination or expiration of this Agreement;

(i) make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the federal Department of Health and Human Services ("HHS") for purposes of HHS determining Covered Entity's compliance with the Privacy Regulations. Business Associate agrees to notify the Covered Entity promptly of communications with HHS regarding Protected Health Information covered by this Agreement and to provide Covered Entity with copies of any information Business Associate has made available to HHS under this provision;

(j) to the extent the Business Associate is to carry out one or more of Covered Entity's obligations under the HIPAA Privacy Regulations, comply with the requirements of the Privacy Regulations that apply to the Covered Entity in the performance of such obligations;

(k) implement and maintain appropriate administrative, physical, and technical safeguards, consistent with the HIPAA Security Rule and applicable federal guidance, to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information (ePHI) it creates, receives, maintains, or transmits on behalf of Covered Entity. These safeguards shall include the adoption of recognized security practices, such as those aligned with the NIST Cybersecurity Framework, HITRUST, or other HHS-endorsed standards. Business Associate acknowledges that civil and criminal penalties under HIPAA apply to Business Associates in the same manner as they apply to Covered Entities and shall provide written attestation of its use of such recognized security practices upon request.

(l) notify Covered Entity within 24 hours of any cyber event requiring activation of its incident response or contingency plans;

(m) refrain from storing, processing or otherwise handling or using Protected Health Information outside the United States and its territories (i.e., "offshore" activities), and refrain from engaging any subcontractor who conducts any such offshore activities, unless Covered Entity approves in writing a specific offshore activity. Notwithstanding any provision in the underlying Services Agreement or this Agreement, Business Associate will indemnify Covered Entity against any and all liability based on the improper use or disclosure of Protected Health Information resulting from the offshore activity; and

(n) cooperate with the Covered Entity in investigating and taking prompt corrective action to prevent or cure any violation of any federal or state law governing Protected Health Information.

Section 3. Permitted Uses and Disclosures by Business Associate

(a) 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 pursuant to the underlying Services Agreement between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(b) Specific Use and Disclosure Provisions

(1) 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.

(2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities 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 be 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 has been breached.

(3) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

(4) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

Section 4. Obligations of Covered Entity

Covered Entity shall:

(a) notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;

(b) notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;

(c) notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Section 5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

Section 6. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the effective date of the underlying Services Agreement between the parties and shall terminate upon the earlier of:

(1) expiration or termination of the underlying Services Agreement; or

(2) termination of this Agreement for cause by the Covered Entity as authorized by subsection (b) below.

(b) Termination for Cause. Upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:

(1) provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by non-breaching party; or

(2) immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and cure is not possible.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) Business Associate shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, Business

Associate shall provide a letter to Covered Entity certifying that all possible records have been returned to Covered Entity or destruction has been completed. If Business Associate destroys Protected Health Information, it shall be done using technology or a methodology that renders the Protected Health Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance.

(3) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return, or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Section 7. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.

(b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of applicable law governing Protected Health Information.

(c) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with applicable law governing Protected Health Information.

(d) Indemnification. Each party agrees to indemnify and hold harmless the other party and its affiliated organizations, and their Board members, officers, agents, and employees, from any and all claims of any kind, including costs, expenses and attorney fees, which arise as a result of the negligence or intentional misconduct of, or breach of this Business Associate Agreement by, the indemnifying party or its Board members, officers, agents or employees. This subsection will survive termination or expiration of this Agreement. Any limitation of liability provision set forth in the underlying Services Agreement shall not apply to the indemnification obligation described in this subsection.

(e) Qualified Service Organizations. If any Part 2 Program of the Covered Entity or its affiliates discloses Protected Health Information to Business Associate that is subject to the rules set forth in 42 C.F.R. Part 2 (“Confidentiality of Alcohol and Drug Abuse Patient Records”) because it involves diagnosis, treatment or referral for treatment of alcohol abuse and/or drug abuse, Business Associate acknowledges that it will be a “qualified services organization” under 42 C.F.R. § 2.11. Accordingly, Business Associate will not re-disclose such information except as permitted by 42 C.F.R. Part 2,

and will otherwise comply with such rules in receiving, storing, processing or otherwise dealing with any Protected Health Information covered by them. Further, if necessary, Business Associate will resist in judicial proceedings any effort to gain access to such patient records except as permitted by these rules.

(f) No Waiver of Privilege. Neither Covered Entity nor Business Associate is waiving any legal privilege, including but not limited to the attorney/client privilege, by virtue of any provision in this Agreement.

(g) Inconsistencies. To the extent of any inconsistencies between the Services Agreement and this Agreement, this Agreement shall be controlling.

The parties have caused this Agreement to be executed on the date first written above.

DATE:_____

NORTH COUNTRY HEALTHCARE, INC.

BY:_____

_____
Print Name

_____
Title

DATE:_____

[BUSINESS ASSOCIATE]

BY:_____

_____
Print Name

_____
Title