# MASTER BUSINESS ASSOCIATE AGREEMENT

by and between

OSF HEALTHCARE SYSTEM

and

Click here to enter Company/Business Associate Name

This Master Business Associate Agreement (“Master BAA”) is entered into on this Enter Number day of Enter Month, Enter Year by and between OSF Healthcare System (and its subsidiaries and affiliates; collectively, “Covered Entity”) and Enter Company Name (and its subsidiaries and affiliates; collectively, “Business Associate”). Each party hereto shall hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

**WHEREAS**, Covered Entity and Business Associate have entered into various agreements and may enter into additional agreements in the future; and

**WHEREAS**, this Master BAA is effective with respect to any such existing or future agreements that involve the creation, use, disclosure or maintenance of Protected Health Information (“PHI”) on behalf of the Covered Entity (these agreements hereinafter referred to collectively as the “Agreements”); and

**WHEREAS**, the purpose of this Master BAA is to assure the privacy and security of Protected Health Information and Electronic Protected Health Information in accordance with the regulations (collectively referred to as the “HIPAA Rules”) issued by the Department of Health and Human Services (“HHS”) under the Health Insurance Portability and Accountability Act of 1996 as codified at 42 U.S.C. §1320d (“HIPAA”) as amended by the Health Information Technology for Economic and Clinical Health Act as codified at 42 U.S.C.A. prec. §17901 (“HITECH”), enacted as part of the American Recovery and Reinvestment Act (“ARRA”); and

**WHEREAS**, the HIPAA Rules specify requirements with respect to the contracts between an entity covered under the HIPAA Rules and its business associates (generally defined as parties that perform certain services on behalf of, or provide certain services for, a covered entity and, in conjunction therewith, gain access to Protected Health Information, and more specifically defined in 45 C.F.R. §160.103); and

**WHEREAS**, Covered Entity is the owner and operator of multiple covered entities that collectively function as a single affiliated covered entity, as defined in the HIPAA Rules; and

**WHEREAS**, in accordance with the HIPAA Rules, the Parties seek to enter into an agreement specifying certain of their respective obligations when acting in the capacity of a covered entity and a business associate.

**NOW** **THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## Article 1. Definitions

The following defined terms are key terms in this Master BAA. Terms used, but not otherwise defined, in this Master BAA shall have the same meaning as ascribed to those terms in the HIPAA Rules, as applicable.

### 1.1 “Breach” means the unauthorized acquisition, access, use, or disclosure of Protected Health Information (“PHI”) that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. “Breach” does not include:

(a) Any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of Covered Entity or Business Associate, so long as such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual with Covered Entity or Business Associate and so long as such information is not further acquired, accessed, used, or disclosed by any person; or

(b) Any inadvertent disclosure by an individual who is authorized to access PHI at a Covered Entity or Business Associate to another individual authorized to access PHI at the same Covered Entity or Business Associate, or organized health care arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed.

### 1.2 “Electronic Protected Health Information” or “Electronic PHI” means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Rules.

### 1.3 “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164, and the HITECH Act.

### 1.4 “HITECH Act” means the privacy, security and breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

### 1.5 “Individual” has the same meaning as the term “individual” in 45 C.F.R. §160.103 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

### 1.6 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

### 1.7 “Protected Health Information” or “PHI” has the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

### 1.8 “Required by Law” means as required by applicable law or regulation.

### 1.9 “Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.

### 1.10 “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 C.F.R. §164.304.

### 1.11 “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and certain definitions in relation thereto at 45 C.F.R. Parts 160, 162, and 164.

### 1.12 “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance.

## Article 2. Business Associate Obligations and Activities

### 2.1 Permitted Uses. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

### 2.2 Permitted Disclosures. Business Associate shall not disclose PHI except for the purpose of performing Business Associate’s obligations under the Agreements and as permitted by this Master BAA. Business Associate shall not disclose PHI in any manner that would constitute a violation of the HIPAA Rules if so disclosed by Covered Entity. However, Business Associate may use or disclose PHI

(a) For the proper management and administration of Business Associate;

(b) To carry out the legal responsibilities of Business Associate;

(c) As Required by Law;

(d) For Data Aggregation purposes for the Health Care Operations of Covered Entity as set forth in Section 2.4 below;

(e) To subcontractors and agents in accordance with Section 2.14 below; or

(f) As directed by Covered Entity.

If Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure:

(g) Reasonable written assurances from such third party that such PHI shall be held confidential as provided pursuant to this Master BAA and only disclosed as Required by Law or for the purposes for which it was disclosed to such third party; and

(h) A written agreement from such third party to immediately notify Business Associate of any breach of the confidentiality of the PHI, to the extent that it has obtained knowledge of such breach.

### 2.3 Minimum Necessary and Limited Data Set. Business Associate agrees to limit its uses and disclosures of, and requests for, PHI:

(a) When practical, to the information making up a Limited Data Set; and

(b) In all other cases, subject to the requirements of 45 C.F.R. §164.502(b) and 42 U.S.C. §17935(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.

Business Associate shall implement and use reasonable written policies and procedures for limiting uses and disclosures of, and requests for, PHI to the minimum necessary and for limiting the access of personnel to PHI necessary for their job functions. Covered Entity authorizes Business Associate to transmit a limited data set at the direction of Covered Entity to another Business Associate of Covered Entity, but Business Associate shall not transmit any additional PHI without the written approval of Covered Entity.

### 2.4 Data Aggregation. Business Associate may use and disclose PHI created or received by Business Associate in its capacity as a Business Associate of Covered Entity to provide Data Aggregation services relating to the Health Care Operations of Covered Entity, provided that Business Associate notifies Covered Entity in advance of intended Data Aggregation services and receives written approval from Covered Entity to provide such Data Aggregation services.

### 2.5 Creation of De-Identified Data. In the event that Business Associate wishes to convert PHI to De-Identified Data, Business Associate must first submit its proposed plan for accomplishing the conversion to Covered Entity for Covered Entity’s approval, which shall not be unreasonably withheld, provided that such conversion meets the requirements of the HIPAA Rules. Business Associate may only use De-Identified Data as directed or otherwise agreed to by Covered Entity.

### 2.6 Limitations on Use and Disclosure. Business Associate agrees not to use or further disclose the PHI other than as may be expressly permitted or required by this Master BAA or as Required by Law. Business Associate shall not obtain any rights in PHI accessed by Business Associate to provide services pursuant to the Agreements. Business Associate shall not use PHI for its personal business benefit or internal use, disclose, distribute, sell, market, aggregate, assess, evaluate, or commercialize data, create derivative works or applications using PHI or otherwise use PHI in any manner not expressly permitted in this Master BAA or permitted in writing by Covered Entity.

To the extent that Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164 (the Privacy Rule), Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations. Business Associate further agrees not to use or disclose PHI other than as permitted or required by the Agreements, in furtherance of the services provided by Business Associate for Covered Entity, or as Required by law. Business Associate shall not sell PHI and Electronic Health Records or use or disclose PHI for marketing or fundraising purposes as set forth in 42 U.S.C. §17935(d) or 42 U.S.C. §17936(a), respectively. Business Associate shall secure PHI in accordance with 42 U.S.C. §17932(h) and the related regulations at 45 C.F.R. Part 164, Subpart D (the Breach Notification Rule), as well as any guidance issued by the Secretary that specifies secure technologies and methodologies such that Unsecured PHI is not maintained by Business Associate.

In accordance with the definition of “Payment” in the Privacy Rule, Business Associate shall not disclose PHI relating to the collection of premiums or reimbursement to any consumer reporting agency other than (a) the Individual’s name and address, (b) the Individual’s date of birth, (c) the Individual’s social security number, (d) the Individual’s payment history, (e) the Individual’s account number, and (f) the name and address of the creditor health care provider and/or health plan.

### 2.7 Appropriate Safeguards and Compliance with Security Rule. Business Associate shall implement and use appropriate safeguards, and comply, where applicable, with the Security Rule with respect to Electronic PHI and documentation requirements, as are necessary to prevent the use or disclosure of PHI otherwise than as permitted by the Agreements or this Master BAA, including, but not limited to, administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that Business Associate creates, receives, maintains, or transmits on Covered Entity’s behalf, in accordance with HITECH Act §13401(a) and 45 C.F.R. §164.308, §164.310, and §164.312. Business Associate acknowledges and agrees that the administrative, physical, and technical safeguards requirements of 45 C.F.R. §164.308, §164.310, and §164.312 shall apply to Business Associate in the same manner that such sections apply to Covered Entity. Business Associate shall comply with the provisions of 45 C.F.R. Part 164, Subpart C of the HIPAA Rules with respect to Electronic PHI to prevent any use or disclosure of PHI other than as permitted by this Master BAA, and shall implement and maintain in written form reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of the HIPAA Rules, in accordance with 45 C.F.R. §164.316.

### 2.8 Report of Inconsistent Use or Disclosure, Security Incident or Breach.

(a) Business Associate agrees to notify the designated Privacy Officer of Covered Entity of any use or disclosure of PHI by Business Associate not provided for by the Agreements, including breaches of Unsecured PHI as required at 45 C.F.R. §164.410, and any security incident of which it becomes aware. Business Associate shall make such notification without unreasonable delay, but in no case more than thirty (30) calendar days following discovery of a Breach, including instances in which an agent or subcontractor has improperly used or disclosed PHI. For purposes of this Master BAA, a Breach shall be treated as discovered as of the first day that Business Associate knows of, or should reasonably have known of, such Breach. Business Associate agrees to provide the following information in such notice to Covered Entity:

(i) The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during the Breach;

(ii) A description of the nature of the Breach, including the types of Unsecured PHI that were involved, the date of the Breach, and the date of discovery;

(iii) A description of the type of Unsecured PHI acquired, accessed, used, or disclosed in the Breach (e.g., full name, social security number, date of birth);

(iv) The identity of the person who made and who received (if known) the unauthorized acquisition, access, use, or disclosure;

(v) A description of what Business Associate is doing to investigate the breach, mitigate the damages, and protect against future breaches; and

(vi) Any other details necessary for Covered Entity to assess the risk of harm to Individuals, and the steps that such Individuals should take to protect themselves.

(b) Covered Entity shall be responsible for providing notification to Individuals whose Unsecured PHI has been disclosed, as well as to the Secretary and the media, as required.

(c) Business Associate agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

(d) The Parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. For purposes of this Master BAA, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of Electronic PHI.

(e) For any notification regarding the Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§164.404-164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity’s obligation of notifying patients, the government, and the media of a breach where the PHI was maintained, used, or disclosed by Business Associate when the breach occurred.

### 2.9 Mitigating Effect of Breach, Unauthorized Disclosure or Misuse of PHI. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a misuse or unauthorized disclosure of PHI by Business Associate in violation of the requirements of this Master BAA. Business Associate shall reasonably cooperate with Covered Entity’s efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its PHI, including complying with a reasonable corrective action plan.

### 2.10 Prohibition on Sale of PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, unless:

(a) Covered Entity has obtained, in accordance with 45 C.F.R. §164.508, a valid authorization from the Individual that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that Individual; or

(b) Any of the exceptions listed in HITECH Act §13405(d)(2) and 45 C.F.R. § 164.502(a)(5)(ii)(B)(2) apply.

The Parties agree that any of the regulations promulgated by the Secretary pursuant to HITECH Act §13405(d)(3) shall automatically be incorporated into, and apply as of the Applicable Effective Date, to this Master BAA.

### 2.11 Electronic Health Records. If Business Associate maintains an Electronic Health Record containing PHI created for or obtained from Covered Entity that is part of Covered Entity’s Designated Record Set, Business Associate shall provide Covered Entity a copy of such information in an electronic format, as provided for in HITECH Act §13405(e) and 45 C.F.R. §164.524(c)(2)(ii) when an Individual has made such a request of Covered Entity that would apply to PHI maintained by Business Associate.

### 2.12 Compliance with Other Requirements. Business Associate shall comply with the following:

(a) Requests for restrictions on use or disclosure to health plans for Payment or Health Care Operations purposes when the provider has been paid out of pocket in full consistent with HITECH Act §13405(a) and 45 C.F.R. §164.522(a)(i)(vi) ; and

(b) The prohibition on receiving remuneration for certain communications that fall within the exceptions to Marketing (as defined in 45 C.F.R. §164.501) unless permitted by the Agreements, the HIPAA Rules, and HITECH Act §13406.

### 2.13 Civil or Criminal Penalties. Business Associate shall be responsible for the full cost of all civil and criminal penalties assessed upon Business Associate or upon Covered Entity as a result of the failure of Business Associate, its officers, directors, employees, or agents to comply with this Master BAA or any requirement imposed upon Business Associate by HIPAA, as amended from time to time, including any implementing regulations, as amended from time to time. This obligation shall survive the expiration or termination of this Master BAA for any reason. Business Associate agrees to ensure that any agent, including a subcontractor to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Master BAA to Business Associate with respect to such information.

### 2.14 Agents and Subcontractors. Business Associate agrees to enter into a written contract with any agent or subcontractor to which Business Associate provides or makes available PHI in accordance with 45 C.F.R. §164.502(e)(1)(ii) and §164.308(b)(2), and agrees that such contract shall obligate Business Associate’s agent or subcontractor, as applicable, to abide by the same terms, restrictions, conditions, and requirements with respect to use and disclosure of the PHI as are recited in this Master BAA. Business Associate shall ensure that any agent, including a subcontractor, to whom Business Associate provides PHI agrees in writing to implement reasonable and appropriate safeguards to protect it and to report to Business Associate any security incidents of which it becomes aware. Business Associate shall report such security incidents to Covered Entity in accordance with Section 2.8. Business Associate further agrees that Covered Entity shall be named an intended third party beneficiary of each such contract with respect to the enforcement and enjoyment of the benefits of such terms and conditions. If a subcontractor engages in a pattern of conduct or practice in material breach of its written contract with Business Associate, Business Associate shall take reasonable steps to cure the breach and, if such steps are unsuccessful, terminate the contract, if feasible.

### 2.15 PHI Access. Within ten (10) business days of a request by Covered Entity for access to PHI about an Individual maintained by Business Associate in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained in a Designated Record Set. In the event that any Individual requests access to PHI directly from such Business Associate, Business Associate shall notify Covered Entity and respond to the request for PHI within fifteen (15) business days. If the requested PHI is maintained electronically, Business Associate must provide a copy of the PHI in the electronic form and format requested by the Individual, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual. Any denials of access to the PHI requested shall be the responsibility of Covered Entity. Business Associate may charge Covered Entity or the Individual for the actual labor cost involved in providing such access. Business Associate shall immediately notify Covered Entity, in writing, upon Business Associate’s receipt of any such request from other than Covered Entity, and upon receipt of any subpoena or other request for PHI by legal process, and shall provide Covered Entity with a copy of any PHI so accessed.

### 2.16 PHI Amendment. Business Associate agrees to make any amendment to PHI in a Designated Record Set that Covered Entity directs or agrees to in accordance with applicable law, including, but not limited to, 45 C.F.R. §164.526, at the request of Covered Entity or an Individual. Business Associate shall make any such amendment within twenty (20) calendar days after receipt of direction or agreement of Covered Entity and shall promptly provide Covered Entity with written verification that such amendment has been made. Business Associate shall immediately notify Covered Entity, in writing, upon Business Associate’s receipt of any such request from other than Covered Entity and shall obtain Covered Entity’s direction or agreement before making any such requested amendment.

### 2.17 PHI Accounting. Business Associate agrees to maintain and make available to Covered Entity an accounting of disclosures of PHI made by Business Associate as would be required for Covered Entity to respond to a request by an Individual made in accordance with 45 C.F.R. §164.528. At a minimum, the accounting of disclosures shall include the following information:

(a) The date of disclosure;

(b) The name of the person or entity who received the PHI, and if known, the address of such person or entity;

(c) A brief description of the PHI disclosed; and

(d) A brief statement of the purpose of such disclosure, which includes an explanation of the basis of such disclosure.

In the event that the request for an accounting is delivered directly to Business Associate, Business Associate shall notify Covered Entity and respond to the request within fifteen (15) business days. Any denials of a request for an accounting shall be the responsibility of Covered Entity. Business Associate agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

Business Associate need not record disclosure information or otherwise account for disclosures of PHI that this Master BAA or Covered Entity in writing permits or requires:

(a) For the purpose of Covered Entity’s treatment activities, payment activities, or health care operations (except where such recording or accounting is required by the HITECH Act, and as of the effective dates for §13405 of the HITECH Act);

(b) To the Individual who is the subject of the PHI disclosed or to that Individual’s personal representative;

(c) To persons involved in that Individual’s health care or payment for health care;

(d) For notification for disaster relief purposes;

(e) For national security or intelligence purposes;

(f) To law enforcement officials or correctional institutions regarding inmates; or

(g) Pursuant to an authorization.

### 2.18 Disclosure of Practices, Access to Books and Records. Business Associate agrees to make internal practices, books, and records, including policies and procedures, and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity and to the Secretary for the purposes of the Secretary determining Covered Entity’s compliance and/or Business Associate’s with the HIPAA Rules. Such access shall be provided to Covered Entity within thirty (30) calendar days of the request and to the Secretary in a time and manner designated by the Secretary.

Business Associate shall immediately notify Covered Entity of its receipt of any such request from the Secretary and shall provide Covered Entity with a copy of any such materials so accessed.

### 2.19 Audits, Inspection, and Enforcement. Business Associate agrees to make its books, records, agreements, policies and procedures with respect to its performance hereunder available to Covered Entity, upon prior written request during normal business hours, for the purposes of determining Business Associate’s compliance with this Master BAA. Within ten (10) business days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Master BAA for the purpose of determining whether Business Associate has complied with this Master BAA; provided, however, that:

(a) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing, and location of such inspection;

(b) Covered Entity shall protect the confidentiality of all the confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and

(c) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the Parties, if requested by Business Associate.

The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Master BAA, nor does Covered Entity’s failure to detect or detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity’s enforcement rights under the Agreements or this Master BAA. Business Associate shall notify Covered Entity within five (5) business days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### 2.20 Remedies. Business Associate agrees that Covered Entity shall be entitled to seek immediate injunctive relief, as well as to exercise all other rights and remedies that Covered Entity may have at law or in equity in the event of an unauthorized use or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that has received PHI from Business Associate.

### 2.21 Ownership. PHI shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI as a result of this Master BAA.

### 2.22 Waiver. No forbearance or neglect on the part of Covered Entity or Business Associate to enforce or insist upon any of the applicable provisions of this Master BAA shall be construed as a waiver of Covered Entity’s or Business Associate’s rights hereunder unless it is in writing and signed by a duly authorized officer of Covered Entity and Business Associate. A waiver with respect to one event shall not be construed as continuing, or as a bar to or a waiver of any right or remedy as to subsequent events.

### 2.23 No Offshore Work. In performing the functions, activities, or services for, or on behalf of, Covered Entity, Business Associate shall not, and shall not permit any of its subcontractors, to transmit or make available any PHI to any person or entity outside the United States without the prior written consent of Covered Entity.

## Article 3. Covered Entity Responsibilities

### 3.1 Notice of Privacy Practices of Covered Entity. Covered Entity shall notify Business Associate in writing of any limitation(s) in the notice of privacy practices of Covered Entity under 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.

### 3.2 Restrictions in Use of PHI. Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.

### 3.3 Changes in Use of PHI. Covered Entity shall notify Business Associate of any restriction on 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.

### 3.4 Permissible Requests by Covered Entity. Except as otherwise provided in this Master BAA, Covered Entity shall not ask Business Associate to use or disclose PHI in any manner that would violate the HIPAA Rules or the HITECH Act if done by Covered Entity.

## Article 4. General Provisions

### 4.1 Original Agreements. The Agreements, as amended hereby, shall remain in full force and effect unless sooner terminated as provided for therein. In the event of conflict between any provision of the Agreements and any provision of this Master BAA, the applicable provisions of this Master BAA shall control. This Master BAA shall supersede any earlier business associate agreement, addendum or other such document between the parties hereto.

### 4.2 Counterparts. This Master BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

### 4.3 Indemnification. To the fullest extent permitted by law, Business Associate agrees to and hereby does indemnify, defend, and hold harmless Covered Entity, its subsidiaries, affiliates, and joint ventures, and its and their respective members, directors, officers, employees, agents, and subcontractors (collectively the “Indemnified Parties”) against any and all damages, losses, lost profits, fines, penalties, costs, and expenses (including reasonable attorneys’ fees and interest) and all liabilities to third parties arising out of, or related to, a breach of this Master BAA or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under this Master BAA, or in connection with a Breach, by Business Associate or its employees, directors, officers, subcontractors, agents, and successors in interest. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Master BAA for any reason.

### 4.4 Term and Termination.

(a) Term. This Master BAA shall take effect on the effective date of the first of the Agreements between the parties and shall thereafter continue in effect until the termination date of the last of the Agreements entered into by the parties hereto.

(b) Termination for Cause. Covered Entity may terminate any and all Agreements and this Master BAA if Covered Entity determines that Business Associate has violated a material term of this Master BAA. Upon Covered Entity’s knowledge of a material breach by Business Associate of this Master BAA, Covered Entity shall, in its sole discretion, either:

(i) Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate any and all Agreements and this Master BAA; or

(ii) Immediately terminate any and all Agreements and this Master BAA.

(c) Covered Entity’s Election to Continue Agreements. If neither termination nor cure is feasible (including by reason of a challenge by Business Associate to the existence of a breach or violation or to Covered Entity’s right to terminate), Covered Entity may elect to continue any and all Agreements.

(d) Obligations of Business Associate Upon Termination. At the termination of any of the Agreements, if feasible, Business Associate shall return or destroy all PHI received from or created or received by Business Associate (pursuant to such of the Agreements being terminated) on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of the PHI or, if such return or destruction is not feasible, extend the protections (of such of the Agreements that is being terminated) to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

### 4.5 Miscellaneous.

(a) Regulatory References. A reference in this Master BAA to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to negotiate in good faith any modification of this Master BAA that may be necessary or required to ensure consistency with any amendment to or change in applicable law, or for Covered Entity to comply with applicable law, including, but not limited to, the HIPAA Rules and the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191. Covered Entity shall have the right to terminate any and all Agreements and this Master BAA in the event that Business Associate fails or refuses to incorporate any provision into this Master BAA that Covered Entity believes, upon advice of counsel, is necessary for Covered Entity to comply with any amendment or change in applicable law.

(c) Survival. The respective rights and obligations of Business Associate and Covered Entity under the following sections shall survive the termination of an Agreement or this Master BAA: Section 2.13 (Civil or Criminal Penalties), Section 4.3 (Indemnification), and Section 4.4(d) (Obligations of Business Associate Upon Termination).

(d) Interpretation. Any ambiguity in the Agreements or this Master BAA shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

(e) Independent Contractor. Notwithstanding any other provision of the Agreements or this Master BAA, each Party is acting independently of the other Party, and the provisions of the Agreements and this Master BAA shall not be construed as meaning that the Parties are acting as the agents or employees of the other party, but, in fact, each Party recognizes that it is acting in the capacity of an independent contractor. Covered Entity shall have no authority to control or direct, nor shall it exercise control or direction over, the manner or method by which Business Associate provides services to Covered Entity.

(f) No Third Party Beneficiaries. Nothing express or implied in this Master BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**OSF Healthcare System Enter Company/Business Associate Name**

By: By:

Name: Name:

Title: Title:

Date: Date:

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| --- | --- |
| ***Contact information in the event of an incident:*** | |
| **Notification Address:**  OSF HealthCare  Attn: Privacy Officer, Compliance  124 SW Adams St  Peoria, IL 61602  (309) 308-5965 | **Notification Address:**  Enter Title,  Address,  Phone Number  Email Address |
| *With a copy to:* | *With a copy to:* |
|  | Enter Title,  Address,  Phone Number  Email Address |