

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BA Agreement**”) is made and entered into effective as of February 17, 2010 (“**Effective Date**”), by and between \_\_\_\_\_ (the “**Business Associate**”) and **Froedtert Health, Inc. f/k/a Froedtert & Community Health, Inc.**, 9200 West Wisconsin Avenue, Milwaukee, Wisconsin 53226 (“**FH**”), on behalf of its affiliates Froedtert Memorial Lutheran Hospital, Inc., Community Memorial Hospital of Menomonee Falls, Inc., St. Joseph’s Community Hospital of West Bend, Inc., West Bend Clinic, Inc., West Bend Surgery Center, LLC, Kettle Moraine Anesthesiology, Inc., and Froedtert Physician Partners, Inc. (each affiliate is referred to as the “**Covered Entity**”) (FH and the Business Associate are each a “**Party**” and collectively the “**Parties**”).

This BA Agreement modifies any written and oral agreements existing as of the Effective Date between FH or the Covered Entity and the Business Associate, and such terms shall apply to any future written or oral agreement between such parties whether or not this BA Agreement is incorporated by reference, and all such agreements shall be collectively referred to as the “**Agreement**,” whether written or oral provided that the singular shall mean the plural as the context so requires. The term “Agreement” specifically includes, but is not limited to, purchase orders issued by the Covered Entity. This BA Agreement is intended to supersede any business associate agreement previously in place between the Parties.

### RECITALS

- A. The Covered Entity operates a Wisconsin acute care hospital in or through which are provided a variety of inpatient and outpatient services, operates an ambulatory surgical center, is a multi-specialty physician clinic, or is an outpatient or other health care services provider.
- B. The Business Associate performs or assists in performing an activity on behalf of the Covered Entity involving the use or disclosure of Protected Health Information (“**PHI**”) that is created or received by the Business Associate for, from or on behalf of the Covered Entity.
- C. The Covered Entity and the Business Associate acknowledge that any PHI subject to this Agreement is not the Covered Entity’s Designated Record Set, as that term is defined in 45 C.F.R. § 164.501.
- D. The Covered Entity and the Business Associate want to modify the Agreement to address certain contractual requirements that are now or will become applicable to the Covered Entity or the Business Associate due to regulations issued pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”).

**IN CONSIDERATION** of the above recitals and covenants contained in this BA Agreement, the Parties agree as follows:

## **1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.**

**1.1 Provision of Services.** Pursuant to the Agreement, the Business Associate provides services (“**Services**”) for the Covered Entity that involve the use and/or disclosure of the PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of the PHI necessary to perform its obligations under the Agreement. All other uses not authorized by this BA Agreement are prohibited. Moreover, the Business Associate may disclose the PHI for the purposes authorized by this BA Agreement only: (i) to its employees, subcontractors and agents, in accordance with Section 2.1.5; (ii) as directed by the Covered Entity; or (iii) as otherwise permitted by the terms of this BA Agreement including, but not limited to, Section 1.2.2 below.

**1.2 Business Activities of the Business Associate.** Unless otherwise limited herein, the Business Associate may:

1.2.1 Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.

1.2.2 Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Covered Entity, in writing, that (i) the disclosure is required by law, as provided for in 45 C.F.R. § 164.501; or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. § 164.504(e)(4) and the third party notifies the Business Associate of any breaches in the confidentiality of the PHI.

1.2.3 The Business Associate’s proper management and administration does not include the use or disclosure of the PHI for its marketing purposes or to support marketing.

**1.3 Additional Activities of Business Associate.** In addition to using the PHI to perform the Services, the Business Associate may:

1.3.1 If the Agreement is for data aggregation services, aggregate the PHI in its possession with the PHI of other covered entities that the Business Associate has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose the PHI to another covered entity absent the explicit authorization of the Covered Entity.

1.3.2 If the Agreement provides for de-identification or when explicitly authorized by the Covered Entity, de-identify the PHI, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514, and further provided that the Covered Entity maintains the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from the Business Associate. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this BA Agreement.

## **2. RESPONSIBILITIES OF THE BUSINESS ASSOCIATE.**

**2.1 Use and Disclosure of Protected Health Information.** With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- 2.1.1 Use and/or disclose the PHI only as permitted or required by this BA Agreement or as otherwise required by law, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the Covered Entity.
- 2.1.2 Report to the designated Privacy Officer of the Covered Entity, in writing, any use and/or disclosure of the PHI that is not permitted or required by this BA Agreement of which Business Associate becomes aware within three (3) business days of the Business Associate's discovery of such unauthorized use and/or disclosure.
- 2.1.3 Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of the PHI or Security Incident that the Business Associate reports to the Covered Entity.
- 2.1.4 Use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of the PHI.
- 2.1.5 Require all of its subcontractors and agents that receive or use, or have access to, the PHI to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of the PHI that apply to the Business Associate pursuant to this BA Agreement.
- 2.1.6 Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of the PHI to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Privacy Rule, subject to attorney-client and other applicable legal privileges.
- 2.1.7 Subject to Section 3.3 below, at the Covered Entity's option, return to the Covered Entity or destroy, within five (5) days of the termination of this BA Agreement, the PHI in its possession and retain no copies (which for purposes of this BA Agreement shall include destroying all backup tapes).

- 2.1.8 Use and disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function or purpose required or permitted hereunder.
  - 2.1.9 Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information (“**EPHI**”) as required by the Security Rule.
  - 2.1.10 Ensure that any agent, including a subcontractor, to whom the Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect the EPHI.
  - 2.1.11 Within three (3) business days of discovery of the Security Incident, report to the designated Security Officer of the Covered Entity, in writing, any Security Incident of which the Business Associate becomes aware.
  - 2.1.12 Provide its employees and workforce members who will have access to the PHI with general HIPAA related training and education prior to allowing such employees’ and workforce members’ access to the PHI.
- 2.2 Safeguards Against Misuse of Information.** The Business Associate acknowledges that the Security Rule and HITECH apply directly to the Business Associate and agrees to comply with such rules and regulations as applicable. The Business Associate shall develop, implement, maintain and use appropriate administrative, physical and technical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted PHI created, received, maintained or transmitted for, from, or on behalf of, the Covered Entity. The Business Associate shall document and keep such security measures current.
- 2.3 Reporting of a Breach.** The Business Associate shall report to the designated Privacy Officer of the Covered Entity, in writing, any Breach of PHI within three (3) business days of discovery of the Breach. A Breach of PHI shall be treated as “discovered” as of the first day on which such Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate.
- 2.4 Investigation of Breach.** The Business Associate shall immediately conduct an investigation in coordination with the Covered Entity. The Business Associate shall report to the designated Privacy Officer of the Covered Entity, in writing, no later than within ten (10) days of discovery of a Breach, the following information:
- 2.4.1 Each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed during the Breach.

- 2.4.2 A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.
- 2.4.3 A description of the types of PHI that were involved in the Breach (such as full name, social security number, date of birth home address, account number, etc.).
- 2.4.4 A brief description of what the Business Associate is doing to investigate the Breach, to mitigate losses and to prevent further Breaches.
- 2.4.5 The actions the Business Associate has undertaken or will undertake to mitigate any harmful effect of the Breach.
- 2.4.6 A corrective action plan that includes the steps the Business Associate has taken or will take to prevent future similar Breaches.

**2.5 Coordination of Breach Notification.** The Business Associate shall cooperate with the Covered Entity with respect to any required Breach notifications. At the Covered Entity's option, the Business Associate will be responsible for notifying individuals of the Breach or will cooperate with the Covered Entity as required for the Covered Entity to provide the notification. The Business Associate shall be responsible for any cost of such notifications, as well as any costs associated with the Breach including, but not limited to, credit monitoring. When the Covered Entity requires the Business Associate to provide the notification, the Business Associate must obtain the Covered Entity's approval of the time, manner and content of any such notifications, and provide the notifications within sixty (60) days of discovery of the Breach. The Business Associate also will provide the Covered Entity evidence that the notifications were made as required.

**2.6 Mitigation.** In coordination with the Covered Entity, the Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a misuse or unauthorized disclosure of PHI by the Business Associate in violation of the requirements of this BA Agreement. Prior to taking any action pursuant to this Section, the Business Associate shall first consult with the Covered Entity and shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its PHI.

**2.7 Access to Protected Health Information.** Within five (5) days of a request by the Covered Entity for access to PHI about an individual, the Business Associate shall make available to the Covered Entity the PHI it requests for so long as the Business Associate maintains the PHI. If any individual requests access to PHI about the individual directly from the Business Associate, the Business Associate shall notify the Covered Entity within two (2) days of receiving such a request. At the Covered Entity's option or when required by law, the Business Associate shall make available and provide a right of access to the PHI to the individual, at the times and in the manner required by 45 C.F.R. § 164.524.

**2.8 Accounting of Disclosures of Protected Health Information.** The Business Associate shall record for each disclosure to its subcontractors, agents or other third parties of the PHI: (i) the date of the disclosure; (ii) the name and address (if known) of the person or entity to whom the Business Associate made the disclosure; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure. The Business Associate need not record such disclosure information that this BA Agreement or the Covered Entity in writing permits or requires for the purpose of the Covered Entity's treatment activities, payment activities or Health Care Operations, except as may otherwise be required by applicable law. Within fifteen (15) days of a request by the Covered Entity, the Business Associate shall provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528.

**2.9 No Sale of Protected Health Information.** The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless the Business Associate: (i) has obtained prior written approval from the Covered Entity; and (ii) has received a valid authorization from the individual that specifies that the Business Associate can further exchange PHI about the individual for remuneration by the entity receiving the PHI, in accordance with the requirements of 45 C.F.R. § 164.508 and HITECH. The foregoing provision shall not apply to the Covered Entity's payment to the Business Associate for Services provided under the Agreement.

**2.10 No Off-Shore Activities.** The Business Associate shall not provide or transmit the PHI to anyone outside the geographical boundaries of the United States for any purpose or permit anyone located outside the geographical boundaries of the United States access to the PHI, including an employee, agent or subcontractor, without the prior written approval of the Covered Entity.

### **3. TERM AND TERMINATION.**

**3.1 Term.** This BA Agreement shall become effective as of the Effective Date and shall continue in effect until all obligations of the Parties have been met under the Agreement, unless terminated as provided in this Section 3. In addition, certain provisions and requirements of this BA Agreement shall survive its expiration or other termination in accordance with Section 5.3 herein.

**3.2 Termination by the Covered Entity.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this BA Agreement and the Agreement, any other provision of the Agreement notwithstanding, if the Covered Entity makes the determination, in its sole discretion, that the Business Associate has breached a material term of this BA Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with written notice of the existence of an alleged breach; and (ii) afford the Business Associate an opportunity to cure said alleged breach. Failure to

cure in the manner set forth in this paragraph is grounds for the immediate termination of this BA Agreement and the Agreement, any other provision of the Agreement notwithstanding.

**3.3 Effect of Termination.** Upon the event of termination pursuant to this Section 3, the Business Associate agrees to, at the Covered Entity's option, return to the Covered Entity or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify the Covered Entity in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession; and (ii) the specific reasons for such determination. The Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this BA Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this BA Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this BA Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this BA Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. Any termination of the Agreement as provided in this Section 3, shall be without liability or further obligation of the part of the Covered Entity, except those provisions that survive any termination of the Agreement.

#### **4. RESPONSIBILITY OF PARTIES.**

**4.1 No Indemnification.** Except as specifically identified herein, each Party is responsible for all acts and omissions of itself and its employees and agents and no Party agrees to indemnify any other Party for such acts or omissions; provided, however, this provision does not constitute a waiver by any Party of any right to indemnification, contribution, subrogation, or other remedy available to that Party at law or in equity.

**4.2 Waiver of Limitation of Liability and Disclaimer of Warranty.** Any and all limitations of liability or disclaimers of warranty in the Agreement shall not apply to the Business Associate's liability arising under this BA Agreement.

#### **5. MISCELLANEOUS.**

**5.1 Covered Entity.** For purposes of this BA Agreement, the Covered Entity shall include all persons and entities covered by its joint notice of privacy practices (or privacy notice), which includes the Covered Entity's medical staff.

- 5.2 **Business Associate.** For purposes of this BA Agreement, the Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a covered entity under the Privacy Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.504(a), as the Business Associate for purposes of this BA Agreement.
  
- 5.3 **Survival.** The respective rights and obligations of the Business Associate and the Covered Entity under the provisions of Sections 3.3, 4, 5.3, and Section 2 solely with respect to the PHI the Business Associate retains in accordance with Section 3.3 because it is not feasible to return or destroy such PHI, shall survive termination of this BA Agreement indefinitely.
  
- 5.4 **Amendments; Waiver.** This BA Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The foregoing sentence notwithstanding, upon the effective date of any law, final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services or other governmental agency with respect to PHI, this BA Agreement will automatically amend such that the obligations they impose on the Business Associate remain in compliance with these regulations. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
  
- 5.5 **No Third Party Beneficiaries.** Nothing express or implied in this BA Agreement 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, except those rights conferred to the affiliates of FH.
  
- 5.6 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below.

If to FH, to:

Froedtert Health, Inc.  
 9200 West Wisconsin Avenue  
 Milwaukee, WI 53226-3596  
 Attn: Privacy Officer

If to Business Associate, to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

With a copy to:

Froedtert Health, Inc.  
 9200 West Wisconsin Avenue  
 Milwaukee, WI 53226-3596  
 Attn: General Counsel

With a copy to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

- 5.7 Counterparts; Facsimiles.** This BA Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- 5.8 Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this BA Agreement, the Parties shall make good faith efforts to resolve such matters informally.
- 5.9 Incorporation.** Notwithstanding any other provision of this BA Agreement, any provisions now or hereafter required to be included in this BA Agreement by applicable state and federal law, including without limitation, the Privacy Rule, the Security Rule and HITECH, shall be binding upon and enforceable against the Parties and be deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this BA Agreement.
- 5.10 Representation and Warranty.** The Business Associate represents and warrants that all of its employees, agents, representatives, and members of its workforce, whose services may be used to fulfill obligations under this BA Agreement are or shall be appropriately informed of the terms of this BA Agreement and are under legal obligation to fully comply with all provisions of this BA Agreement.
- 5.11 Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA and HITECH.
- 5.12 Statutory and Regulatory References.** All references in this BA Agreement to any law or regulation are to the provision as currently in effect and as subsequently, updated, amended or revised.
- 5.13 Definitions.** Terms used but not otherwise defined in this BA Agreement shall have the same meaning as set forth in the Privacy Rule or the Security Rule.

## **6. DEFINITIONS.**

- 6.1 Breach.** Breach means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI and shall have the meaning as set forth in its definition at 45 C.F.R. § 164.402.
- 6.2 Electronic Protected Health Information.** EPHI shall have the meaning as set out in its definition at 45 C.F.R. § 160.103. For purposes of this BA Agreement, EPHI shall be limited to the EPHI that the Business Associate creates, receives, maintains, or transmits for, from or on behalf of the Covered Entity.
- 6.3 Health Care Operations.** Health Care Operations shall have the meaning as set out in its definition at 45 C.F.R. § 164.501.

- 6.4 HITECH.** HITECH means the Health Information Technology for Economic and Clinical Health Act, which was included in the American Recovery and Reinvestment Act of 2009.
- 6.5 Privacy Officer.** Privacy Officer shall have the meaning as set out in its description at 45 C.F.R. § 164.530(a)(1).
- 6.6 Privacy Rule.** 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.
- 6.7 Protected Health Information.** PHI shall have the meaning as set out in its definition at 45 C.F.R. § 160.103. PHI includes, without limitation, Electronic Protected Health Information as defined herein. For purposes of this BA Agreement, PHI shall be limited to the PHI that the Business Associate creates, receives, maintains, or transmits for, from, or on behalf of the Covered Entity.
- 6.8 Security Incident.** Security Incident shall have the meaning as set out in its definition at 45 C.F.R. § 164.304.
- 6.9 Security Rule.** Security Rule means the Security Standards Specifications for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- 6.10 Unsecured Protected Health Information.** 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 of HHS and shall have the meaning as set out in its definition at 45 C.F.R. § 164.402.

**EFFECTIVE** as of the date first written above.

**Froedtert Health, Inc.**

**Business Associate**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_