

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”), effective as of July 1, 2008 (“Effective Date”), is entered into by and between _____ (the “Business Associate”) and **Froedtert & Community Health, Inc.**, 9200 W. Wisconsin Avenue, Milwaukee, WI 53226 (“F&CH”), on behalf of its affiliates Froedtert Memorial Lutheran Hospital, Inc., Community Memorial Hospital of Menomonee Falls, Inc., Community Outpatient Health Services of Menomonee Falls, Inc., St. Joseph’s Community Hospital of West Bend, Inc., West Bend Clinic, Inc., West Bend Surgery Center, LLC, and Kettle Moraine Anesthesiology, Inc. (each affiliate is referred to as the “Covered Entity”) (F&CH and the Business Associate are each a “Party” and collectively the “Parties”).

This BA Agreement amends any written and oral agreements existing as of the Effective Date between F&CH 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.

RECITALS

- A. The Covered Entity either 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 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 amend the Agreement to address certain contractual requirements that are now or will become applicable to the Covered Entity due to regulations issued pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

IN CONSIDERATION of the mutual covenants and agreements contained in this BA Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

1.1 Services. Pursuant to the Agreement, the Business Associate provides services (“Services”) for the Covered Entity that involve the use and/or disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of 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 PHI for the purposes authorized by this BA Agreement only, (i) to its employees, subcontractors and agents, in accordance with Section 2.5; (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 disclosures are 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.

1.3 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 PHI of the Covered Entity to another covered entity absent the explicit authorization of the Covered Entity.

1.3.2 De-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), 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. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- 2.1** Use and/or disclose the PHI only as permitted or required by this BA Agreement or as otherwise required by law.
- 2.2** 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 five (5) days of the Business Associate's discovery of such unauthorized use and/or disclosure.
- 2.3** Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI or security incident that the Business Associate reports to the Covered Entity.
- 2.4** Use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI.
- 2.5** Require all of its subcontractors and agents that receive or use, or have access to, PHI under this BA Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate pursuant to Section 2 of this BA Agreement.
- 2.6** Record for each disclosure to its subcontractors, agents or other third parties of PHI that the Business Associate creates or receives for or from the Covered Entity: (i) the disclosure date; (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.
- 2.7** Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
- 2.8** Upon prior written request, make available during normal business hours at the Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Covered Entity within ten (10) days for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this BA Agreement.

- 2.9** Within fifteen (15) days of receiving a written request from the Covered Entity, 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.
- 2.10** Subject to Section 4.3 below, 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 mean destroy all backup tapes).
- 2.11** 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 required or permitted hereunder.
- 2.12** Implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information (“EPHI”).
- 2.13** 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.
- 2.14** Report to the Covered Entity any Security Incident of which it becomes aware.
- 2.15** Provide its employees and workforce members who will have access to the Covered Entity’s PHI with general HIPAA related training and education prior to allowing such employees’ and workforce members’ access to the Covered Entity’s PHI.
- 3. ACCESS TO NETWORKS.** The Business Associate agrees that while present at any Covered Entity facility and/or when accessing the Covered Entity’s computer network(s), it and all of its employees, agents, representatives and subcontractors shall at all times comply with any network access and other security practices, procedures and/or policies established by the Covered Entity, including without limitation, those established pursuant to the HIPAA Security Rule.
- 4. TERMS AND TERMINATION.**
- 4.1 Term.** This BA Agreement shall become effective on 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 4. In addition, certain provisions and requirements of this BA Agreement shall survive its expiration or other termination in accordance with Section 7.3 herein.
- 4.2 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 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.

4.3 Effect of Termination. Upon the event of termination pursuant to this Section 4, the Business Associate agrees to return 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 4, shall be without liability or further obligation of the part of the Covered Entity, except those provisions that survive any termination of the Agreement.

5. CONFIDENTIALITY. In the course of performing under this BA Agreement, each Party may receive, be exposed to or acquire the Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this BA Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this BA Agreement and is provided for elsewhere. The Parties including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this BA Agreement; (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this BA Agreement; and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this BA Agreement. This provision shall not apply to Confidential Information: (i) after it becomes publicly available through no fault of either Party; (ii)

which is later publicly released by either Party in writing; (iii) which is lawfully obtained from third parties without restriction; or (iv) which can be shown to be previously known or developed by either Party independently of the other Party.

6. INDEMNIFICATION.

6.1 Indemnification. The Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its affiliates and their respective employees, directors, officers, subcontractors, agents or other members of their respective workforces from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this BA Agreement by the Business Associate or any subcontractor, agent, person or entity under the Business Associate's control.

6.2 Right to Tender or Undertake Defense. If the Covered Entity and/or its affiliate(s) is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this BA Agreement by the Business Associate or any subcontractor, agent, person or entity under the Business Associate's control, the Covered Entity will have the option at any time either (i) to tender its defense to the Business Associate, in which case the Business Associate will provide qualified attorneys, consultants and other appropriate professionals to represent the Covered Entity's and its affiliates' interests at the Business Associate's expense, or (ii) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to repeat its interests, in which case the Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

6.3 Right to Control Resolution. The Covered Entity will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that the Covered Entity may have tendered its defense to the Business Associate. Any such resolution will not relieve the Business Associate of its obligation to indemnify the Covered Entity and its affiliates under this Section 6.

7. MISCELLANEOUS.

7.1 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.

7.2 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 Regulation, 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.

7.3 Survival. The respective rights and obligations of the Business Associate and the Covered Entity under the provisions of Sections 4.3, 5, 6, 7.3, 8 and Section 2.1 solely with respect to PHI the Business Associate retains in accordance with Section 4.3 because it is not feasible to return or destroy such PHI, shall survive termination of this BA Agreement indefinitely.

7.4 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 final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to PHI, this BA Agreement and the 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.

7.5 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 F&CH.

7.6 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 Business Associate, to:

with a copy to:

Attn: Privacy Officer

Attn: _____

If to F&CH, to:

with a copy to:

Froedtert & Community Health
9200 W. Wisconsin Avenue
Milwaukee, WI 53226-3596
Attention: Privacy Officer

Froedtert & Community Health
9200 W. Wisconsin Avenue
Milwaukee, WI 53226-3596
Attn: General Counsel

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.

7.7 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.

7.8 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.

8. ARBITRATION AND ATTORNEYS FEES.

8.1 If any of the terms and conditions of this BA Agreement are claimed by one Party to have been violated by the other, or if there is a dispute as to the effect of any of the terms of this BA Agreement, both Parties agree to make every reasonable effort to resolve such controversy or dispute through "good faith" negotiations prior to seeking remedies at law. If such "good faith" negotiations do not resolve the controversy or dispute, either Party shall then make application to the American Health Lawyers Association by way of formal demand for commercial arbitration of said dispute by a single neutral arbitrator. The arbitration shall take place in Milwaukee, Wisconsin, and shall be binding on all parties. Said award may be reduced to judgment by any Party pursuant to Wisconsin law.

8.2 If any Party files any action or brings any proceeding against any other Party arising out of, or to enforce, any terms of this BA Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees.

9. DEFINITIONS.

9.1 Electronic Protected Health Information. EPHI shall have the meaning as set out in its definition at 45 C.F.R. § 160.103, as such provision is currently drafted and as it is subsequently updated, amended or revised. For purposes of this BA Agreement, EPHI shall be limited to the EPHI that the Business Associate creates, receives, maintains, or transmits for or from the Covered Entity.

9.2 Health Care Operations. Health Care Operations shall have the meaning as set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

9.3 Privacy Officer. Privacy Officer shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised.

9.4 Protected Health Information. PHI shall have the meaning as set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised. For purposes of this BA Agreement, PHI shall be limited to the PHI that the Business Associate creates, receives, maintains, or transmits for or from the Covered Entity.

9.5 Security Incident. Security Incident shall have the meaning as set out in its definition at 45 C.F.R. § 164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised.

IN WITNESS WHEREOF, each of the undersigned has caused this BA Agreement to be duly executed in its name and on its behalf effective as of the Effective Date set forth above.

Froedtert & Community Health, Inc.

Business Associate

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____