

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement"), is made as of _____, 2023 (the "Effective Date"), by and between _____ "Business Associate"), , and **ASHLAND HOSPITAL CORPORATION d/b/a KING'S DAUGHTERS MEDICAL CENTER**, a Kentucky non-profit corporation with its principal place of business at 2201 Lexington, Ave., Ashland, KY 41101 ("Covered Entity"), (collectively the "Parties") in order to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Subtitle D of Division A of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), the federal Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule"), the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), and the final rule on Breach Notification for Unsecured Protected Health Information (the "Breach Notification Rule").

WHEREAS, Business Associate provides, or will provide, to Covered Entity certain services;

WHEREAS, in connection with these services, Covered Entity Discloses or may Disclose to Business Associate certain Protected Health Information ("PHI") that is subject to protection under the Privacy Rule and/or the Security Rule, or Business Associate may create, receive, maintain or transmit PHI on behalf of Covered Entity;

WHEREAS, the Privacy Rule and the Security Rule require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity; and

WHEREAS, the purpose of this Agreement, among other things, is to comply with the requirements of the Privacy Rule and the Security Rule.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A. Definitions. Terms used herein, but not otherwise defined, shall have meaning(s) ascribed by 45 CFR parts 160, 162 and 164.
1. Breach. "Breach" shall have the same meaning as the term "breach" in 45 CFR 164.402.
 2. Breach Notification Rule. "Breach Notification Rule" shall mean the Final Rule on Breach Notification for Unsecured Protected Health Information at 45 CFR parts 160 and 164, subparts A and D, as amended.
 3. Business Associate. "Business Associate" shall mean _____.
 4. Covered Entity. "Covered Entity" shall mean both Ashland Hospital Corporation d/b/a King's Daughters Medical Center and Portsmouth Hospital Corporation d/b/a King's Daughters Medical Center – Ohio.
 5. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for Covered Entity; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. For purposes of this definition,

the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, Used, or disseminated by or for Covered Entity.

6. Electronic Protected Health Information or Electronic PHI. "Electronic Protected Health Information" or "Electronic PHI" shall have the same meaning as the term "electronic protected health information" in 45 CFR 160.103.
 7. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
 8. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E, as amended.
 9. Protected Health Information ("PHI"). "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
 10. Required by Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
 11. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her Designee.
 12. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
 13. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR parts 160 and 164, subparts A and C, as amended.
- B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may Disclose PHI to Business Associate for the purposes of receiving such services from Business Associate.
- C. Obligations of 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 Rule if done by Covered Entity, except for Data Aggregation services specified in Section D.1 of this Agreement.
- D. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the Privacy Rule applicable to business associates (as defined by the Privacy Rule), including:
1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or as Required by Law, Business Associate shall not Use or Disclose PHI except as necessary, in its sole discretion, to provide services to or on behalf of Covered Entity, and shall not Use or Disclose PHI in a manner that would violate the Privacy Rule if Used or Disclosed by Covered Entity. Each such Use or Disclosure must either be Required By Law or in compliance with each applicable requirement of this Agreement, and Business Associate may not Use or Disclose PHI in a manner that would

violate the Privacy Rule if done by Covered Entity; provided, however, Business Associate may Use and Disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, and for the Data Aggregation services described below. Business Associate shall in such cases obtain reasonable assurances from the person or entity to whom the PHI is Disclosed that: (a) the PHI will be held confidential and further Used and Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached.

Business Associate may also Disclose PHI to a Subcontractor and may allow the Subcontractor to create, receive, maintain or transmit PHI on its behalf, if Business Associate obtains a written agreement with the Subcontractor in accordance with 45 CFR 164.504(e)(1)(i) and this Agreement that the Subcontractor will appropriately safeguard the information.

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 CFR 164.504(e)(2)(i)(B).

Business Associate shall provide information to members of its workforce Using or Disclosing PHI regarding the requirements of the Privacy Rule, the Security Rule, and this Agreement.

Business Associate agrees to notify the designated Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is Used or Disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Rule or the Security Rule, or in which a Breach has occurred, within three (3) business days of becoming aware of the improper Use or Disclosure or Breach.

Business Associate shall not Use or further Disclose PHI other than as permitted or required by this Agreement or as Required By Law.

The parties acknowledge that applicable law requires Business Associate to Disclose PHI when required to do so by the Secretary to investigate Business Associate's compliance with regulations promulgated under HIPAA or the HITECH Act, or to the Covered Entity, individual who is the subject of the PHI, or the individual's designee, as necessary to satisfy Covered Entity's obligations with respect to an individual's request for an electronic copy of PHI.

2. De-identified Information. Business Associate may Use and Disclose de-identified health information, if the de-identification is in compliance with 45 CFR 164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR 164.514(a) and (b), as well as the Guidance on De-Identification of PHI issued by the Secretary on November 26, 2012, and any updates to such guidance.
3. Safeguards. Business Associate shall implement and maintain administrative, physical, and technical safeguards, and comply with the Security Rule with respect to Electronic PHI:
 - (a) to ensure that PHI is not Used or Disclosed other than as provided by this Agreement; and
 - (b) to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

4. Security Incident(s). Business Associate shall report to Covered Entity any Security Incident of which it becomes aware within three (3) business days of becoming aware of the Security Incident.
5. Minimum Necessary. Business Associate shall make reasonable efforts to ensure that Uses and Disclosures of and requests for PHI are subject to the principle of "minimum necessary Use and Disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the Use, Disclosure, or request is Used, Disclosed or requested, subject to the exceptions set forth in 45 CFR 164.502(b)(2).
6. Subcontractors. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any Subcontractors that may create, receive, maintain or transmit PHI or ePHI on behalf of Contractor shall execute a written contract agreeing to abide by the same restrictions, requirements and conditions that apply through this Agreement to Business Associate with respect to such information, including without limitation an agreement to implement reasonable and appropriate safeguards to protect Electronic PHI and to abide by the requirements of the Security Rule.
7. Individual Rights Regarding Designated Record Sets. Covered Entity shall maintain the original Designated Record Set and, therefore, it is not anticipated that Business Associate will maintain any records subject to an Individual's right to access and copy records. When notified by Covered Entity, Business Associate shall make amendments or corrections to PHI as instructed by Covered Entity. Covered Entity shall be solely responsible to the Individual for accepting or rejecting an amendment requested by the Individual. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:
 - (a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set to allow the parties to meet the requirements of 45 CFR 164.524. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for labor and supplies in copying PHI may be charged if permitted by applicable state law. If the Individual requests mailing of copies or the summary, a cost-based fee may be charged for postage if permitted by applicable state law. If the Individual requests a summary of PHI, a reasonable cost-based fee may be charged for preparing the summary if permitted by applicable state law and if the fee is approved by the Individual in advance. Notwithstanding the foregoing, if the PHI requested is maintained in one or more Designated Record Sets electronically, the Business Associate shall provide the Individual with access to the PHI in the electronic form and format the Individual requests, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the Business Associate and the Individual. If an Individual's request for access directs the Business Associate to transmit the PHI directly to another person designated by the Individual, the Business Associate must provide the copy to such person if the request is in writing, signed by the Individual, and clearly identifies such person and where to send the PHI. If Covered Entity maintains

all the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the Privacy Rule.

(b) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of Disclosures of PHI in accordance with 45 CFR 164.528 and with 42 USC 17935, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of Disclosures. Such accounting is limited to Disclosures that were made in the six (6) years prior to the request and shall be provided for as long as Business Associate maintains the PHI.

8. Internal Practices and Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices and policies and procedures relating to the Use and Disclosure of PHI received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the Privacy Rule. Records requested that are not protected by an applicable legal privilege shall be made available in the time and manner specified by the Secretary. If it is necessary for Business Associate to invoke and defend the attorney-client privilege, Covered Entity shall agree to pay the cost for such defense.

9. Business Associate Carrying Out Covered Entity's Obligations. To the extent Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of the obligation.

E. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

2. Termination for Breach. If Covered Entity determines that Business Associate has breached a material provision of this Agreement, it may terminate this Agreement on a date specified by Covered Entity.

3. Effect of Termination. Upon termination of this Agreement for any reason or for no reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for as long as Business Associate retains the PHI.

F. HITECH Act Amendments. To comply with certain provisions contained in the American Recovery and Reinvestment Act of 2009, the parties agree to comply with the following terms:

1. The requirements of Subtitle D of Division A of the HITECH Act contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are

incorporated into this Agreement, and Business Associate shall comply with those requirements and any implementing regulations.

2. Business Associate may Use and Disclose PHI that it obtains or creates only if such Use or Disclosure, respectively, is in compliance with each applicable requirement of 45 C.F.R. 164.504(e).

G. Miscellaneous.

1. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
2. Mitigation. If Business Associate violates this Agreement or the Privacy Rule, Business Associate agrees to attempt to mitigate any damage caused by such breach.
3. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

King's Daughters Medical Center
2201 Lexington, Avenue
Ashland, Kentucky 41101
Attn: General Counsel

If to Business Associate:

4. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time, as necessary in order to allow Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule, the Breach Notification Rule, and the HITECH Act and its implementing regulations.
5. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the Commonwealth of Kentucky, without regard to applicable conflict of laws principles. Venue of any legal proceedings arising from this Agreement will lie solely and exclusively in the County of Boyd, Commonwealth of Kentucky.
6. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
7. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or

remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

8. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
9. Entire Agreement. This Agreement, together with all Exhibits, Riders, and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement and any provisions of the Exhibits, Riders, or amendments (except to the extent expressly amending this Agreement), the provisions of this Agreement shall control.
10. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.
11. Indemnification. Each party will indemnify, hold harmless and defend the other party to this Agreement from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result of, or arising directly or indirectly out of or in connection with: (i) any material misrepresentation, breach, or non-fulfillment of any undertaking on the part of the party under this Agreement; and (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.
12. Survival. The respective rights and obligations of Business Associate under Sections D.7(b) and E.3 shall survive the termination of this Agreement. Section G(1)-(3) and (5)-(12) of this Agreement shall survive the termination of this Agreement, as shall any unauthorized Disclosure, Security Incident, or Breach notification duties set forth in this Agreement.

**ASHLAND HOSPITAL CORPORATION d/b/a
KING'S DAUGHTERS MEDICAL CENTER**

Vendor:

By: _____

By: _____

Its: _____

Its: _____