

Contract # {---Agency Assigned Contract ID---}

## BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is entered on {---Effective Date---} (“Effective Date”) by and between **Genesee Health System**, a Michigan Community Mental Health Authority (“Covered Entity”) and {---Company Name---}, a {---State---} business (“Business Associate”), together referred to as “Parties.” whose address is {---Street1---} {---Street2---} {---City---}, {---State---} {---Zip Code---}

### RECITALS

A. The Parties have entered into one or more agreements under which Business Associate provides certain services to Covered Entity (“Services”).

B. The Health Insurance Portability and Accountability Act of 1996 and applicable privacy and security regulations, Pub. L. 104-191, Subtitle F, Administrative Simplification; and 45 CFR Parts 160, 162 & 164 (collectively “HIPAA”) were enacted to prohibit the use and disclosure of Protected Health Information (“PHI”), and “Electronic PHI or ePHI,” as is defined at 45 C.F.R. § 160.103 as amended (collectively “PHI”), except under limited circumstances.

C. HIPAA was amended by enactment of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Title XIII, Subtitle D of PL 111-5, 123 Stat 115 (“HITECH”). HITECH and the applicable regulations expanded HIPAA’s enforcement provisions; extended certain HIPAA privacy and security requirements to business associates; defined notification requirements for data breaches; and amended certain provisions related to the use of PHI.

D. Business Associate may receive, maintain, or transmit certain information to Covered Entity or create certain information on behalf of Covered Entity, which may constitute PHI as those terms are defined in HIPAA.

### THEREFORE THE PARTIES AGREE:

#### Section 1. Definitions for Use in This Agreement.

A. “Breach Notification Rule” shall mean regulations published in 74 FR 42740 and 74 FR 19006, implementing section 13402 of the Health Information Technology for Economic and Clinical Health, HITECH Act.

B. "Business Associate" is a business associate as that term is defined in 45 CFR Part 160.103.

C. "Secretary" shall mean the Secretary of the Department of Health and Human Services.

D. "Privacy Rule" shall mean The Health Insurance Portability and Accountability Act of 1996 and applicable privacy and security regulations, Pub. L. 104-191, Subtitle F, Administrative Simplification; and 45 CFR Parts 160, 162 & 164, HIPAA, including the enactment of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Title XIII, Subtitle D of PL 111-5, 123 Stat 115, HITECH.

Any terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA and HITECH.

## **Section 2. Permitted Uses and Disclosures by the Business Associate.**

A. Business Associate shall not use or disclose PHI other than as permitted by this Agreement for the provision of Services to Covered Entity or as required by law.

B. Business Associate shall comply with the Privacy Rule in the provision of Services to Covered Entity. Business Associate may use PHI for the proper management and administration of the Business Associate; or to carry out the legal responsibilities of the Business Associate; and data aggregation relating to Covered Entity's health care operations.

**Section 3. Safeguards Against Misuse of PHI.** Business Associate shall comply with the Privacy Rule and HIPAA and will implement appropriate safeguards to prevent the use or disclosure of PHI other than under the terms and conditions of this Agreement and that Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Privacy Rule. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.

**Section 4. Reporting of Wrongful Disclosures of PHI.** Business Associate shall notify Covered Entity within fifteen (15) days of becoming aware of any use or disclosure of PHI not provided for by this Agreement or Privacy Rule. The Business Associate agrees to cooperate with Covered Entity in mitigating, to the extent practicable, any harmful effect that is known to exist as a result of such disclosure or breach. The Business Associate further agrees to cooperate with Covered Entity in

complying with all state and federal public notification requirements arising from such breach.

**Section 5. Agreements by Subcontractors.** Business Associate shall require any subcontractors that receive, maintain, or transmit PHI to agree to the same obligations that apply under the Privacy Rule and in this Agreement to the Business Associate. The Business Associate shall enter into a written agreement with all such subcontractors requiring the subcontractors to comply with all of the obligations of the Business Associate under this Agreement, HIPAA, HITECH, and the Privacy Rule.

**Section 6. Access to PHI.** Within fifteen (15) days of a request by Covered Entity for access to an individual's PHI contained in a designated record set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained in the designated record set. In the event an individual requests access to his or her PHI directly from Business Associate, Business Associate shall, within fifteen (15) days, forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request.

**Section 7. Amendment to PHI.** Within fifteen (15) days of receipt of a request by Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a designated record set, Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments to the PHI as required by the Privacy Rule for so long as the PHI is maintained in the designated record set. In the event an individual requests an amendment to his or her PHI directly from Business Associate, Business Associate shall, within fifteen (15) days, forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request.

**Section 8. Accounting of Disclosures.** Within fifteen (15) days of receipt of a request from the Covered Entity for an accounting of disclosures made by Business Associate of an individual's PHI, Business Associate shall provide to Covered Entity the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure. Business Associate may exclude from the accounting: disclosures made for treatment, payment, or for health care operations, and disclosures made prior to six years from the date of the individual's request. In the event an individual requests an accounting of disclosures of his or her PHI directly from Business Associate, Business Associate shall, within fifteen (15) days, forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request. Business Associate hereby agrees to implement an appropriate record-keeping process to enable it to comply with the requirements of this Section.

**Section 9. Availability of Books and Records.** Covered Entity and Business Associate agree to make their and Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule.

**Section 10. Return or Destruction of PHI upon Termination.** Upon termination of the Services, Business Associate shall either return or destroy all PHI received from the Covered Entity or created or received by Business Associate on behalf of Covered Entity and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI when no longer needed for the purpose for which disclosure was made. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement shall survive termination of the Services and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

**Section 11. Obligations under Privacy Rule.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

**Section 12. Term And Termination Of Agreement.**

A. Term. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate either pursuant to Section 12.B below, or when all of the PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy PHI, protections are extended to such PHI.

B. Termination. Covered Entity and Business Associate may terminate this Agreement at any time by written notice, without being required to state a cause.

C. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

D. Amendment. The Parties agree to amend this Agreement as necessary to comply with the Privacy Rule.

E. Regulatory References. A reference in this Agreement to a section in the Privacy Rule as defined in this Agreement means the section as in effect or as amended.

F. Third-Party Beneficiaries. This Agreement is intended for the sole benefit of Covered Entity and Business Associate and does not create any third-party beneficiary rights.

G. Entire Agreement. This Agreement consists of this document, and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. There are no understandings or agreements relating to this Agreement that have not been stated in this Agreement. No change, waiver or discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced.

H. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

The Parties have executed and delivered this Agreement on the date first written above.

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**{---Company Name---}** (Business Associate)

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**Genesee Health System** (Covered Entity)  
DANIS RUSSELL, CEO