



## BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Chilton Memorial Hospital (“Chilton Hospital”) and \_\_\_\_\_ (“Business Associate”).

### RECITALS

WHEREAS, Chilton Hospital and Business Associate are parties to an agreement dated \_\_\_\_\_, \_\_\_\_\_ (the “Underlying Agreement”) pursuant to which Business Associate provides certain services to Chilton Hospital and, in connection with those services, Chilton Hospital discloses to Business Associate certain individually identifiable protected health information (“PHI”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the associated regulations, 45 CFR Parts 160 and 164 (the “Privacy Rule”), as amended from time to time;

WHEREAS, the parties desire to comply with the HIPAA standards for the privacy of PHI of patients of Chilton Hospital;

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, Chilton Hospital and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

### SECTION I – DEFINITIONS

1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, as may be amended from time to time.

1.2 **Individual** means the person who is the subject of protected health information, and shall have the same meaning as the term “individual” in 45 CFR § 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.3 **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as may be amended from time to time.

1.4 **Protected Health Information (“PHI”)** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of any individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a



reasonable basis to believe the information can be used to identify the individual, and shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Chilton Hospital.

1.5 **Designated Record Set** means the medical records and billing records about individuals maintained by or for a covered entity, and shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.

1.6 **Required By Law** means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law, and shall have the same meaning as the term “required by law” in 45 CFR § 164.501.

1.7 **Secretary** shall mean the Secretary of the Department of Health and Human Services or his designee.

## **SECTION II - OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

2.1 Performance of Underlying Agreement. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Underlying Agreement or as Required By Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

2.3 Mitigation of Harm of Unauthorized Use or Disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.4 Reporting of Unauthorized Use or Disclosure. Business Associate agrees to report to Chilton Hospital in writing any use or disclosure of the Protected Health Information not provided for by this Agreement within five (5) days of becoming aware of such use or disclosure.

2.5 Use of Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Chilton Hospital, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.



2.6 Access to PHI. Business Associate shall make Protected Health Information maintained by Business Associate or its agents or subcontractors in a Designated Record Set available to Chilton Hospital or, as directed by Chilton Hospital, to an Individual, for inspection and copying within ten (10) days of a request by Chilton Hospital to enable Chilton Hospital to meet the requirements under 45 CFR § 164.524.

2.7 Amendments by Business Associate. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Chilton Hospital directs or agrees to pursuant to 45 CFR § 164.526 at the request of Chilton Hospital or an Individual, within thirty (30) days of receipt of a request from Chilton Hospital.

2.8 Access to DHHS. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Chilton Hospital, available to Chilton Hospital or the Secretary, in a time and manner designated by Chilton Hospital or the Secretary, for purposes of the Secretary determining Chilton Hospital's compliance with the Privacy Rule.

2.9 Documentation of Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Chilton Hospital to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.10 Accounting of Disclosures. Business Associate agrees to provide to Chilton Hospital or an Individual, within ten (10) days of receipt of a request from Chilton Hospital, information collected in accordance with Paragraph 2.9 of this Agreement, to permit Chilton Hospital to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.11 Opportunity to Object. Business Associate agrees that, if it has a legal obligation to disclose any PHI, it will notify Chilton Hospital as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that Chilton Hospital's rights would not be prejudiced, as to the legal requirement pursuant to which it believes the PHI must be released. If Chilton Hospital objects to the release of such PHI, Business Associate will allow Chilton Hospital to exercise any legal rights or remedies Chilton Hospital might have to object to the release of the PHI, and Business Associate agrees to provide such assistance to Chilton Hospital, at Chilton Hospital's expense, as Chilton Hospital may reasonably request in connection therewith.



### **SECTION III - PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Chilton Hospital as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Chilton Hospital or the minimum necessary policies and procedures of Chilton Hospital.

3.2 Specific.

3.2.1 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.2.2 Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.2.3 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Chilton Hospital as permitted by 42 CFR § 164.504(e)(2)(i)(B).

3.2.4 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1).

### **SECTION IV - OBLIGATIONS OF CHILTON HOSPITAL**

4.1 Chilton Hospital shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR § 164.520, as well as any subsequent changes or limitations to such notice to the extent that such changes or limitations may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Chilton Hospital shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health



Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4.3 Chilton Hospital shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Chilton Hospital has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

## **SECTION V - TERM AND TERMINATION**

5.1 Term. The term of this Agreement shall be effective as of April 14, 2003 or any later adopted compliance date for the Privacy Rule or on the effective date of this Agreement if executed after April 14, 2003, whichever is later, and shall terminate when all of the Protected Health Information provided by Chilton Hospital to Business Associate, or created or received by Business Associate on behalf of Chilton Hospital, is destroyed or returned to Chilton Hospital, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2 Termination for Cause. Upon Chilton Hospital's knowledge of a material breach by Business Associate, Chilton Hospital shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Chilton Hospital, except that Chilton Hospital shall immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Chilton Hospital shall report the violation to the Secretary.

### 5.3 Effect of Termination.

5.3.1 Except as provided in Paragraph 5.3.2, upon termination of this Agreement, for any reason, Business Associate shall cease and desist all uses and disclosures of Chilton Hospital's Protected Health Information and shall immediately return or destroy (if Chilton Hospital gives written permission) in a reasonable manner consistent with HIPAA, all Protected Health Information received from Chilton Hospital, or created or received by Business Associate on behalf of Chilton Hospital, provided, however, that Business Associate shall reasonably cooperate with Chilton Hospital to ensure that no original Protected Health Information records are destroyed. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. Except as provided by Paragraph 5.3.2, Business Associate shall certify to Chilton Hospital that all Protected Health Information



has been returned (or destroyed) within 30 days after termination or expiration of this Agreement.

5.3.2 In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Chilton Hospital notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **SECTION VI - INDEMNIFICATION AND INSURANCE**

6.1 Indemnification. Business Associate shall indemnify, defend and hold Chilton Hospital and its parent corporation and subsidiaries, their directors, officers, agents, servants, and employees (collectively “the Indemnitees”) harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney’s fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of any breach or alleged breach of the terms of this Agreement by Business Associate.

6.2 Insurance. If Chilton Hospital requires, Business Associate shall obtain and maintain insurance coverage against improper uses and disclosures of Protected Health Information by Business Associate, naming Chilton Hospital as an additional insured. Promptly following a request by Chilton Hospital for the maintenance of such insurance coverage, Business Associate shall provide a certificate evidencing such insurance coverage.

## **SECTION VII – DISCLAIMER**

7.1 CHILTON HOSPITAL MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE PRIVACY RULE WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE’S OWN PURPOSES. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PROTECTED HEALTH INFORMATION.



## SECTION VIII – MISCELLANEOUS

8.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect as of the date of this Agreement, or as subsequently amended.

8.2 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Chilton Hospital to comply with the requirements of the Privacy Rule and HIPAA, as amended. The parties further agree that notwithstanding the terms of this Agreement, the parties will do all things necessary to comply with the requirements of the Privacy Rule and HIPAA, as may be amended from time to time.

8.3 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, or transmitted by hand delivery.

8.4 Survival. The respective rights and obligations of Business Associate under Paragraphs 2.4, 2.8, 5.3.1, 5.3.2, 6.1 and 6.2 of this Agreement shall survive the termination of this Agreement.

8.5 Interpretation. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

8.6 Transferability. Chilton Hospital has entered into this Agreement in specific reliance on the expertise and qualifications of Business Associate. Consequently, Business Associate's interest under this Agreement may not be transferred or assigned or assumed by any other person, in whole or in part, without the prior written consent of Chilton Hospital.

8.7 No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Chilton Hospital and Business Associate and are intended only for their benefit. Neither Chilton Hospital nor Business Associate intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party, and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.



8.8 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of New Jersey, without giving effect to its conflict of law provisions. Any controversy or claim arising out of or related to this Agreement shall be brought solely and exclusively in a court located in New Jersey; provided, however, that either party may enforce any judgment rendered by such court in any court of competent jurisdiction. The parties hereby consent to, and waive any such challenge or objection to, personal jurisdiction and venue in New Jersey.

8.9 Binding Effect. This Agreement shall be binding upon, and shall ensure to the benefit of, the parties hereto and their respective permitted successors and assigns.

8.10 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

8.11 Entire Agreement. This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in any way modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

CHILTON MEMORIAL HOSPITAL

\_\_\_\_\_  
(Name of Business Associate)

By: \_\_\_\_\_

By: \_\_\_\_\_

Thomas Scott

Name: \_\_\_\_\_

Chief Operating Officer

Title: \_\_\_\_\_

97 W. Parkway, Pompton Plains, NJ

Address: \_\_\_\_\_

Phone: (973) 831-5083

\_\_\_\_\_

Fax: (973) 831-5183

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_