

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made and entered into this ___ day of _____, 2015, by and between _____ ("Covered Entity") and Portneuf Quality Alliance, LLC ("Business Associate"). Business Associate and Covered Entity shall each be considered a "Party" and collectively, the "Parties".

RECITALS

- A. The purpose of this Agreement is to comply with the requirements of: (i) the privacy regulations ("Privacy Regulations") and security regulations ("Security Regulations") promulgated by the United States Department of Health and Human Services ("DHHS") pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (ii) the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and (iii) the HHS regulations promulgated on January 25, 2013, entitled the "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act," and (iv) any later promulgated regulations regarding the privacy and security of PHI issued by HHS or by any Act of Congress; hereinafter all such regulations and Acts as they may be amended from time to time shall be collectively referred to as the "Confidentiality Requirements."
- B. Business Associate provides services for Covered Entity, pursuant to the terms of one or more agreements between the Parties (the "Participation Agreement"), and the Participation Agreement requires Business Associate to use, disclose, receive, maintain, transmit, access and/or create Protected Health Information ("PHI"), including electronic protected health information ("E PHI"), on behalf of Covered Entity.
- C. In accordance with the Confidentiality Requirements, the Parties are required to enter into a "business associate agreement" to protect the privacy and security of PHI, including E PHI. The Parties desire to enter into this Agreement to describe the manner in which Business Associate will use, disclose, receive, maintain, transmit, access, create and protect PHI, including E PHI.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the Parties agree as follows:

1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Confidentiality Requirements. All references to PHI shall be construed to include E PHI, and PHI shall refer only to PHI used, disclosed, received, accessed, maintained, transmitted and/or created for or on behalf of Covered Entity pursuant to the Participation Agreement.

2. **Obligations and Activities of Business Associate.** Business Associate acknowledges and agrees it meets the definition of a "business associate" at 45 C.F.R. §160.103. Only in accordance with this Agreement and the Confidentiality Requirements may Business Associate use, disclose, access, create, maintain, transmit and/or receive on behalf of Covered

Entity health information that is protected under applicable state and/or federal law, including without limitation PHI and EPHI. With regard to the use and disclosure of PHI, Business Associate hereby agrees as follows:

- (a) Use and Disclosure of PHI. Business Associate shall use, disclose, access, create, maintain, transmit and/or receive PHI on behalf of Covered Entity only as permitted or required by applicable law, as required to perform the services under the Participation Agreement or as permitted or required by the terms of this Agreement. Business Associate shall not use or disclose PHI in a manner that would constitute a violation of the Confidentiality Requirements if such use or disclosure were made by Covered Entity. Business Associate shall only access, create, receive, use, disclose, maintain, and/or transmit PHI in compliance with this Agreement and the Confidentiality Requirements, including 45 C.F.R. §164.504(e). To the extent the Business Associate is to carry out Covered Entity's obligations under the Confidentiality Requirements, the Business Associate shall comply with the provision(s) of the Confidentiality Requirements that would apply to the Covered Entity in the performance of such obligation(s).

Without limiting the foregoing, Business Associate:

- (i) May use PHI to carry out Business Associate's responsibilities under this Agreement and the Participation Agreement, to the extent permitted by law;
- (ii) May use PHI as necessary for the proper management and administration of Business Associate and to carry out its legal responsibilities to the extent permitted by federal and state law;
- (iii) May disclose PHI to third parties as necessary to perform its obligations under the Participation Agreement, and as permitted or required by federal or state law;
- (iv) May disclose PHI for the proper management and administration of Business Associate, provided that (a) such disclosures are required by law, or (b) Business Associate obtains reasonable assurances from the third party receiving PHI pursuant to this **Section 2(a)(iv)** that such PHI will be held confidential and further used and disclosed only as required by law or to accomplish the purpose for which the PHI was disclosed to the third party, and further, Business Associate will require the third party to agree to notify Business Associate of any instances of which it is aware that PHI is used or disclosed for a purpose not provided by this Agreement, or not otherwise permitted by the Confidentiality Requirements;
- (v) May provide Data Aggregation services related to the Health Care Operations of Covered Entity in accordance with the Confidentiality Requirements; and
- (vi) To the extent permitted by the Participation Agreement, this Agreement and the Confidentiality Requirements, may aggregate the Covered Entity's PHI in Business Associate's possession with the PHI of other covered entities that the Business Associate has in its possession through its capacity as a

Business Associate to such other covered entities, provided that the purpose of such aggregation is to provide Covered Entity with data analyses relating to its Health Care Operations.

- (b) Agreements with Subcontractors. If Business Associate uses or contracts with any agent, including a subcontractor (collectively, “**Subcontractors**”) that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of the Business Associate, Business Associate shall require all Subcontractors to agree in writing to the same or at least as restrictive as the restrictions and conditions that apply to Business Associate under this Agreement; specifically, Business Associate agrees to enter into business associate agreements with its Subcontractors that meet the requirements of the Confidentiality Requirements.
- (c) Safeguards; Security Incidents.
 - (1) Business Associate shall (i) use appropriate safeguards to prevent any use or disclosure of PHI other than as permitted by the terms of this Agreement and the Confidentiality Requirements; (ii) provide Covered Entity with information regarding such safeguards upon request; and (iii) maintain the integrity and confidentiality of PHI. In addition, Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it receives, creates, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that it is required to comply with the Security Regulations and Business Associate agrees to comply with these and all other applicable requirements of the Confidentiality Requirements. Business Associate will promptly report to Covered Entity any Security Incident of which it becomes aware.
 - (2) Business Associate shall ensure that each Subcontractor agrees to comply with the Security Standards to protect the confidentiality, integrity, and availability of the PHI that it uses, discloses, creates, receives, maintains and/or transmits on behalf of Business Associate.
- (d) Notification. Upon becoming aware of any use or disclosure of PHI not permitted under the terms of this Agreement, Business Associate shall notify, within ten (10) days of Business Associate becoming aware of such unauthorized use or disclosure, Covered Entity, and Business Associate shall describe the remedial action taken or proposed to be taken with respect to such unauthorized use or disclosure.
- (e) Mitigation. Business Associate shall, to the extent practicable, mitigate any harmful effect known to Business Associate resulting from a use or disclosure of PHI by Business Associate, its agents or subcontractors in violation of this Agreement.
- (f) Access to PHI by Individuals. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall make requested PHI available to Covered Entity within fifteen (15) days of receiving a request for access from Covered Entity, in compliance with 45 C.F.R. § 164.524, as it may be amended from time to time.

- (g) Amendment of PHI. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall, within twenty (20) days of receiving a request from Covered Entity, amend or append (as requested by Covered Entity) PHI in accordance with 45 C.F.R. § 164.526, as it may be amended from time to time.
- (h) Accounting of Disclosures. Business Associate will report to Covered Entity, within thirty (30) days of a request by Covered Entity, sufficient information for Covered Entity to comply with the accounting for disclosures requirements of 45 C.F.R. § 164.528. In the event any request for an accounting is delivered directly to Business Associate by an Individual, Business Associate shall, within five (5) days, forward such request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.
- (i) Disclosures to Secretary of DHHS. Business Associate shall make all internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of DHHS (or the Secretary's authorized representatives) for the purpose of determining the Parties' compliance with the Confidentiality Requirements.
- (j) De-identification and Limited Data Sets. Covered Entity shall retain all rights in the PHI. Except to provide Services to Covered Entity, Business Associate shall not de-identify PHI without the express written authorization of Covered Entity. In no event shall Business Associate create a Limited Data Set from Covered Entity's PHI without first executing a written Data Use Agreement with Covered Entity.

3. Data Breach Notification and Mitigation.

- (a) HIPAA Breach. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The Parties acknowledge and agree that 45 C.F.R. §§164.404 and 164.410, as described below in this **Section 3(a)**, govern the determination of the date of a HIPAA Breach. In the event of any conflict between this **Section 3(a)** and the Confidentiality Requirements, the Confidentiality Requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity promptly and in no event later than ten (10) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. Promptly following Business Associate's notification of a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements

set forth at 45 C.F.R. §164.400 *et seq.* Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach. This **Section 3(a)** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

4. Term and Termination.

(a) Term. This Agreement shall become effective on the date of execution by the Parties. Except as set forth in the survival provisions herein, this Agreement shall continue in effect until the later to occur of: (i) the termination of the Participation Agreement, or (ii) discontinuation of Business Associate's provision of services to Covered Entity involving the use, disclosure and/or creation of PHI.

(b) Termination. Notwithstanding Section 4(a) above, this Agreement may be terminated as follows:

1. Upon mutual written agreement of the Parties; or
2. If Covered Entity determines that Business Associate has materially breached any provision of this Agreement or has experienced a HIPAA Breach, Covered Entity shall have the right to provide Business Associate with a written notice of such breach and terminate the Agreement and the Participation Agreement if Business Associate does not cure the breach to the reasonable satisfaction of Covered Entity within thirty (30) days of receiving such notice.

(c) Effect of Termination. Upon termination of this Agreement, Business Associate shall return to Covered Entity or destroy PHI received, used, disclosed, accessed, created, maintained or transmitted by Business Associate and its Subcontractors through the performance of the Participation Agreement, and retain no copies or back-up records of the PHI. If such return or destruction is infeasible, as determined by the Parties, the obligations set forth in this Agreement with respect to the PHI shall survive termination and Business Associate shall limit, and shall ensure its Subcontractors limit, any further use and disclosure of PHI to the purpose(s) that make the return or destruction of such PHI infeasible. Business Associate further agrees to comply with other applicable state and federal law, which may require a specific period of retention, redaction, or other treatment concerning PHI. This **Section 4(c)** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate or any Subcontractors maintains PHI or Individually Identifiable Information.

5. Amendment. This Agreement may be modified or amended only upon mutual written consent of the Parties. The Parties agree to take any action required to amend this Agreement if either Party, in its reasonable discretion, determines that an amendment is necessary for either Party to comply with the requirements of the Confidentiality Requirements or any other law or regulation affecting the use or disclosure of PHI.

6. **Assignment**. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party.

7. **Notices**. Any notices to be given hereunder shall be deemed effectively given when personally delivered, received by electronic means (including facsimile) or overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Business Associate: Portneuf Quality Alliance, LLC
500 S. 11th Ave., Suite 501
Pocatello, ID 83201

With a copy to: LHP Operations Co., LLC
Attn: General Counsel
2400 Dallas Parkway, Suite 450
Plano, Texas 75093

If to Covered Entity: Attn: Privacy Officer

8. **Survival**. The obligations of Business Associate under the provisions of Sections 2, 3, 8 and 9 shall survive the termination of this Agreement indefinitely.

9. **No Third Party Beneficiaries**. Nothing expressed or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the Parties hereto any rights, remedies, obligations or liabilities whatsoever.

10. **Waiver**. A waiver by either Party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

11. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

12. **Governing Law**. This Agreement shall be governed by, construed, interpreted and enforced under the laws of the state of Idaho.

13. **Independent Contractor**. Business Associate is an independent contractor, and not an agent, of Covered Entity.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the date first listed above.

BUSINESS ASSOCIATE

COVERED ENTITY

**PORTNEUF QUALITY
ALLIANCE, LLC**

By: _____
Name: Dani Jones, M. Coun., LPC
Title: Executive Director

By: _____
Name: _____
Title: _____