

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“Agreement”), by and between Covenant Health, for itself and/or one or more of its Affiliates that are Covered Entities within the meaning of the Privacy and Security Standards (“Covenant”), and the undersigned individual or entity (“Business Associate”), is effective as of the Effective Date.

WHEREAS, Business Associate has agreed to perform certain functions, activities, or services for, or on behalf of Covenant requiring access to, or the use or disclosure of, PHI; and

WHEREAS, Covenant shall disclose or authorize disclosure of PHI to Business Associate only on condition that Business Associate covenants and agrees to comply with the terms and conditions of this Agreement in order to ensure compliance by Covenant and Business Associate with the Privacy Standards and Security Standards, as promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (with such Standards collectively referred to herein as “HIPAA”); The Health Information Technology for Economic and Clinical Health Act included in Division A, Title XIII, Subtitle D of The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009), and any regulations or agency guidance issued pursuant thereto (“HITECH”); and federal substance abuse confidentiality laws.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants of the parties set forth below, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### I. APPLICABILITY AND OBLIGATIONS OF BUSINESS ASSOCIATE

Section 1. Applicability. This Agreement applies to all agreements and relationships between Covenant and Business Associate, whether written or verbal, pursuant to which Covenant provides or will provide any PHI to Business Associate in any form whatsoever (the “Arrangement”). As of the Effective Date, this Agreement shall automatically amend and be incorporated as part of the Arrangement, whether or not specifically referenced therein. In the event of any conflict or inconsistency between this Agreement and the Arrangement, this Agreement shall control unless the Arrangement provision in question establishes additional rights for Covenant or additional duties or restrictions for Business Associate with respect to PHI, in which case the Arrangement provision shall control.

Section 2. Use and Disclosure of PHI. Business Associate may use or disclose PHI only in accordance with this Agreement. Specifically, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covenant as specified in the Arrangement or this Agreement, provided that such use or disclosure would not violate HIPAA if performed by Covenant or the minimum necessary policies and procedures of Covenant. Business Associate also may use PHI for Business Associate’s proper management and administration or to carry out its legal responsibilities. Further, if the Arrangement requires Business Associate to provide Data Aggregation services to Covenant, Business Associate may use PHI to provide such Data Aggregation services to Covenant to the extent permitted by HIPAA. Business Associate shall not use or disclose PHI other than as permitted or required by the Arrangement, this Agreement, or as Required by Law. Business Associate shall, to the extent practicable, limit uses, disclosures, and requests for PHI to a Limited Data Set or to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request (as described in 45 C.F.R. § 164.502(b)(1) and in any guidance issued by the Secretary).

Section 3. Specific Disclosures of PHI; Offshore PHI Storage Prohibited. Business Associate may disclose PHI for Business Associate’s proper management and administration or to carry out its legal responsibilities, but only if such disclosures are Required by Law, or Business Associate obtains reasonable assurances (including any legally required 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Neither Business Associate nor any subcontractor used by Business Associate shall store, process or otherwise handle PHI outside of the United States.

Section 4. Security Standards; Safeguards Against Misuse of Information. Business Associate shall comply with the applicable requirements of the Security Standards and use appropriate safeguards to prevent the use or disclosure of PHI other than in accordance with this Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure in violation of this Agreement.

Section 5. Subcontractors. Business Associate shall ensure that any permitted subcontractor that creates, receives, maintains, or transmits PHI on Business Associate’s behalf agrees to comply with the applicable requirements of the Security Standards by entering into a business associate contract or other arrangement with such subcontractor that meets HIPAA requirements, including without limitation, 45 CFR § 164.314. Such agreement shall require the subcontractor to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this Agreement with respect to PHI.

Section 6. Access to PHI. Within five (5) business days of receipt of Covenant’s or an Individual’s request for access to or a copy of PHI about an Individual contained in a Designated Record Set, Business Associate shall provide such information to Covenant or such Individual in accordance with the requirements of 45 C.F.R. § 164.524 and Section 13405(e) of HITECH (and any regulations/agency guidance issued pursuant thereto). Business Associate’s charges for providing such access or copies shall not be more than permitted by laws applicable to Covenant.

Section 7. Amendments to PHI/Records; Agreed-To Restrictions. Business Associate shall make amendment(s) to PHI in a Designated Record Set that Covenant directs or agrees to pursuant to 45 C.F.R. § 164.526, at the request of Covenant or an Individual, and in the time and manner designated by Covenant. Business Associate shall comply with communicated restrictions in the use or disclosure of PHI to which Covenant has agreed pursuant to 45 C.F.R. § 164.522 and shall further comply with any Individual's request for restrictions on PHI disclosures that Covenant or Business Associate is required by law to honor, including requested restrictions on Payment or Health Care Operations-related disclosures to Health Plans when the Individual's involved Health Care Provider has been paid out of pocket in full.

Section 8. Accounting for Uses and Disclosures; Access Report. Business Associate shall document and make available to Covenant information regarding uses and disclosures of PHI as is required for Covenant to respond to a request by an Individual for an accounting of disclosures or access report of PHI consistent with the requirements of 45 CFR § 164.528 and HITECH. This Section shall survive termination of the Agreement.

Section 9. Availability of Books and Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary in the time and manner designated by the Secretary for purposes of determining Covenant's compliance with HIPAA.

Section 10. Return or Destruction of PHI on Termination. On termination of the Arrangement, if feasible, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, Covenant that is maintained in any form, including any PHI held by Business Associate's subcontractors. Business Associate and its subcontractors shall retain no copies of such information. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible. This Section shall survive termination of the Agreement.

Section 11. Reporting of Uses and Disclosures of PHI; Breach Notification. Consistent with its obligations under HIPAA, Business Associate shall report in writing to Covenant Health's Integrity-Compliance Office within five business days of discovery any Security Incident or use or disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors, or agents, or by a subcontractor to which Business Associate disclosed PHI, including any Breach of Unsecured PHI within the meaning of HIPAA. Such report shall identify each Individual whose Unsecured or unencrypted PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed. Business Associate shall cooperate in Covenant's efforts to address such Security Incident or Breach by, at a minimum, allowing Covenant full access to all of Business Associate's internal documents relating to or employees or agents with information regarding the Security Incident or Breach and shall mitigate the harmful effects of such Security Incident or Breach as reasonable at Business Associate's expense. The parties acknowledge and agree that this Section constitutes notice by Business Associate to Covenant of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as hereinafter defined) for which no additional notice to Covenant shall be required. "Unsuccessful Security Incidents" are those Security Incidents that do not result in unauthorized access, use or disclosure of PHI and shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above.

Section 12. Compliance with Federal Substance Abuse Confidentiality Requirements. If Business Associate is a qualified service organization within the meaning of 42 C.F.R Part 2 and receives, stores, processes, or otherwise deals with any patient record maintained in connection with a federally assisted alcohol and drug abuse program, Business Associate shall be fully bound by 42 C.F.R. Part 2 and, if necessary, shall resist in judicial proceedings any efforts to obtain access to patient records except as permitted by those regulations.

Section 13. Termination for Violation. If Covenant determines that Business Associate has violated any material term of this Agreement or engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covenant shall have the right to terminate the Arrangement with Business Associate. To the extent this Section conflicts or is inconsistent with any provisions of the Arrangement, this Section shall control.

Section 14. Business Associate Compliance. Business Associate represents and warrants that Business Associate is in compliance with the applicable requirements of HIPAA and HITECH, and Business Associate shall maintain such compliance throughout the term of this Agreement. To this end, Business Associate shall conduct security risk analyses in accordance with the Security Standards, including addressing the encryption/security of Electronic Protected Health Information ("E PHI"), correcting identified security deficiencies, and implementing security updates as necessary. Further, Business Associate shall encrypt E PHI in motion consistent with the DHHS Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, 74 FR 19006-19010 (April 27, 2009), and any updates or amendments thereto, and ensure any confidential process or key that might enable decryption has not been breached, as well as ensure that any discarded media on which PHI is stored is shredded, destroyed, cleared, or purged such that the PHI cannot be read, reconstructed, or retrieved. If Business Associate carries out an obligation of Covenant under the Privacy Standards, Business Associate shall comply with the Privacy Standards requirements applicable to Covenant in the performance of such obligation.

## II. GENERAL

Section 1. Amendments. The parties shall take such action as is necessary to amend the Arrangement and this Agreement from time to time as is necessary for Covenant to comply with applicable law. This Agreement may not be changed or modified except in a writing signed by both parties.

Section 2. Statutory or Regulatory References. A reference in this Agreement to a statutory or regulatory section means the section as in effect or as amended and for which compliance is required.

Section 3. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covenant to comply with the Privacy Standards, the Security Standards, HITECH, the Administrative Requirements set forth at 45 C.F.R. Part 162, and The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

Section 4. Waiver. Any waiver of any provision or right by Covenant must be in writing. The waiver of any breach of this Agreement by Covenant shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or any other provision of this Agreement.

Section 5. Effective Date; Term. Except as otherwise specified herein, this Agreement shall become effective as of September 23, 2013 (the "Effective Date"). The term of this Agreement shall commence on the Effective Date and shall terminate on the date the Arrangement terminates.

Section 6. Third-Party Beneficiary. Each Covenant Affiliate that is a Covered Entity is an intended third-party beneficiary of this Agreement. Except as otherwise specifically provided herein, nothing in this Agreement is intended to create any rights or remedies in any other third-party beneficiary, including any Individual whose PHI is used or disclosed.

Section 7. Survivability. Each party hereto shall remain liable for any obligations and liabilities arising from activities occurring prior to the effective date of termination. The covenants and obligations set forth in this Agreement which by their terms or implications are intended by the parties to continue in effect after termination of this Agreement or the Arrangement shall survive termination and shall remain in effect and enforceable by the parties.

Section 8. Severability. The provisions of this Agreement are severable. In the event any provision contained in this Agreement should be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such provision shall be severed, and the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

## III. DEFINITIONS FOR USE IN THIS AGREEMENT

Terms (including capitalized terms) used but not otherwise defined in this Agreement shall have the meaning assigned by HITECH and HIPAA. Each of the following terms shall be construed in accordance with the following:

"Affiliate" means any organization of which Covenant Health, a Tennessee nonprofit corporation, is a member, and any organization that Covenant Health directly, or indirectly through one or more intermediaries, owns or controls, in whole or in part. "Affiliates" include, without limitation, Fort Sanders Regional Medical Center, Parkwest Medical Center, Methodist Medical Center of Oak Ridge, LeConte Medical Center, Fort Loudoun Medical Center, Roane Medical Center, Morristown-Hamblen Healthcare System, Thompson Cancer Survival Center, Thompson Oncology Group, Covenant Medical Management, Fort Sanders West Diagnostic Center, MMC Healthworks, Fort Sanders Perinatal Ctr., Knoxville Heart Group, Fort Sanders Endoscopy Center, Covenant HomeCare, Patricia Neal Rehabilitation Center, Covenant Therapy Centers, Cumberland Medical Center and Claiborne Medical Center.

"Individual" shall have the meaning assigned by HIPAA and shall include a person who qualifies as the Individual's personal representative within the meaning of HIPAA.

"Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, as updated and amended from time to time.

"PHI" means Protected Health Information and shall have the meaning assigned by HIPAA, limited to Protected Health Information from, or created, received, maintained, or transmitted by Business Associate on behalf of, Covenant. For purposes of this Agreement, PHI includes Electronic Protected Health Information, as defined by HIPAA.

"Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 164, Subpart C, as updated and amended from time to time.

[Signatures on Following Page]

**COVENANT HEALTH, FOR ITSELF AND ONE OR MORE OF ITS AFFILIATES**

**COVENANT**

By: \_\_\_\_\_  
( \_\_\_\_\_ )  
print name

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

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

\_\_\_\_\_

print name of contracting entity

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_  
( \_\_\_\_\_ )  
print name

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

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