

**Business Associate Agreement Between  
VHN, Inc. ("Business Associate") and  
Volusia Health Network ("VHN")**

WHEREAS, Business Associate and VHN have entered into one or more agreements (collectively the "Underlying Agreement"), whereby Business Associate provides services or performs a function for or on behalf of VHN, and

WHEREAS, VHN is a Covered Entity under federal privacy regulations and subject to 45 CFR. §§164.314(a) 164.504(e) relating to business associates, and

WHEREAS, the Underlying Agreement between Business Associate and VHN involves access, acquisition, creation, use, disclosure or transmission of protected health information ("PHI") as such information is defined in federal privacy regulations applicable to VHN and Business Associate (45 CFR. Parts 160 and 164).

NOW THEREFORE, VHN and Business Associate agree to enter into this Business Associate Agreement in order to comply with the federal privacy regulations referred to above as follows:

**1. Effective Date**

This Agreement is effective when Business Associate initially becomes a Business Associate of VHN and both parties sign this Agreement. However, certain provisions have special effective dates, as set forth below, or in HIPAA or the HITECH Act.

**2. Definitions**

The following terms have the meanings described in this Section for purposes of this Agreement unless the context clearly indicates another meaning. Terms used but not otherwise defined in this Agreement have the same meaning as those terms in Parts 160 and 164 of Title 45 of the Code of Federal Regulations and the privacy provisions in Section 13400, et seq, of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005).

- a. Business Associate means the entity described in the preamble to this agreement and providing a function or service for or on behalf of VHN as described in the Underlying Agreement.
- b. "CFR" means Code of Federal Regulations.
- c. Covered Entity means the health care provider, health plan or health care clearing house components of VHN for which Business Associate is providing the services or functions described in the Underlying Agreement.
- d. "Designated Record Set" has the same meaning as the term "Designated Record Set" in 45 CFR § 164.501.
- e. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- f. HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.
- g. "HITECH Act" means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act enacted as part of the American Recovery and Reinvestment Act of 2009.
- h. "Individual" has the same meaning as the term "individual" in 45 CFR § 160.103 and includes a person who qualifies as a personal representative in accordance with 45 § CFR 164.502(g).
- i. "Privacy Rule" means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- j. "Protected Health Information" (PHI) has the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, accessed, acquired, received, disclosed or transmitted by Business Associate for or on behalf of VHN.
- k. Required By Law has the same meaning as the term "required by law" in 45 CFR § 164.103.
- l. "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.

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- m. "Security Incident" has the same meaning as the term "Security Incident" in 45 CFR § 164.304, but does not include network pings, scans, or unsuccessful attempts at denial of service or intrusion that do not adversely affect the confidentiality, integrity or availability of PHI.
  - n. "Security Rule" shall mean the security standards and implementation specifications at 45 CFR Part 160 and Part 164, subpart C.
- 3. Obligations and Activities of Business Associate**
- a. Business Associate understands that pursuant to the HITECH Act, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to VHN. As a result, Business Associate agrees to take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Act, including, but not limited to, identification of a security official, risk analysis, risk management, workforce training in privacy and security requirements, implementation of safeguards as required by the Security Rule, and establishment of privacy/security agreements with its subcontractors that perform functions relating to VHN and involving PHI.
  - b. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement or as Required by Law.
  - c. Business Associate agrees to use reasonable and appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or Underlying Agreement. Business Associate shall implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, accesses, acquires, receives, maintains or transmits for or on behalf of VHN as required by the Security Rule at 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.
  - d. Business Associate (or its agents and contractors), shall only request, use and disclose the minimum necessary amount of PHI required to accomplish the purpose of the request, use or disclosure in accordance with the HIPAA and HITECH Act.
  - e. Business Associate shall not use or disclose PHI for marketing purposes except as directed by VHN and in accordance with HIPAA and the HITECH Act.
  - f. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or Underlying Agreement.
  - g. Business Associate agrees to report to VHN any use or disclosure of the PHI not provided for by this Agreement or Underlying Agreement of which it becomes aware and/or any Security Incident of which it becomes aware. At the request of VHN, Business Associate shall identify: the date of the incident or the date the incident was discovered if the incident date is not known, the scope of the incident, the Business Associate's response to the incident and the identification of the party responsible for causing the incident, if known.
  - h. In addition, effective as of September 23, 2009 or the date this Agreement is signed, if later, Business Associates agrees to the following in connection with the breach notification requirements of the HITECH Act:
    - (1) If Business Associate discovers a breach of unsecured PHI, as those terms are defined by in HITECH Act and applicable regulations. Business Associate shall notify VHN without unreasonable delay and within 10 calendar days after discovery. For this purpose, discovery means the first day on which the breach is known to Business Associate or by exercising reasonable diligence would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is known or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer, subcontractor or other agent of Business Associate. The notification must include identification of each individual whose unsecured PHI has been or is has reasonably believed to have been breached and any other available

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information in Business Associate's possession which the VHN is required to include in the individual notice contemplated by 45 CFR § 164.404.

- (2) Notwithstanding the immediately preceding paragraph and unless otherwise agreed to by VHN and Business Associate, Business Associate shall assume the individual notice obligation specified in 45 CFR § 164.404 on behalf of VHN where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to VHN. In such case, Business Associate will prepare the notice and shall provide it to VHN for review and approval at least 10 calendar days before it is required to be sent to the affected individual(s). VHN shall promptly review the notice and shall not unreasonably withhold its approval.
- (3) Further, where a breach involves more than 500 individuals and was committed by the Business Associate or its employee, officer, subcontractor or other agent or is within the unique knowledge of Business Associate as opposed to VHN. Business Associate shall cooperate such that VHN may provide notice to the media pursuant to 45 CFR § 164.406.
  - i. Business Associate agrees to ensure that any agent, including any subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of VHN, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect VHN's electronic PHI.
  - j. The following obligations will apply if Business Associate will have custody of or maintain a Designated Record Set for or on behalf of VHN:
    - (1) Business Associate agrees to provide reasonable access at the written request of VHN to PHI in a Designated Record Set, to VHN or, as directed in writing by VHN, to an Individual in order to meet the requirements under 45 CFR § 164.524, relating to an Individual's right to inspect or obtain copies of his or her PHI.
    - (2) Business Associate agrees to make any amendment(s) or correction(s) to PHI in a Designated Record Set that VHN directs in writing or agrees to pursuant to 45 CFR § 164.526 at the written request of VHN.
  - k. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for VHN to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, or effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of PHI from an Electronic Health Record in accordance with the HITECH Act. The documentation required by this paragraph shall be maintained for six years, or as otherwise required by the HIPAA Privacy and Security Rules.
  - l. Following receipt of a written request by VHN, Business Associate agrees to provide to VHN or an Individual, information collected in accordance with the preceding paragraph, to permit VHN to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, or effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of PHI from an Electronic Health Record in accordance with the HITECH Act.
  - m. Following receipt of a written request by VHN, Business Associate agrees to make internal practices, books, and records including policies and procedures and PHI relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, VHN reasonably available to the Secretary for purposes of the Secretary in determining VHN's compliance with the Privacy Rule and Security Rule.

**4. Permitted Uses and Disclosures By Business Associate**

- a. Except as otherwise limited in this Agreement or Underlying Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, VHN as specified in the Underlying Agreement between VHN and Business Associate, provided that such

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use or disclosure would not violate the HIPAA Privacy or Security Rules or applicable Florida law if done by VHN or the minimum necessary policies and procedures of the VHN. If there is no Underlying Agreement between VHN and Business Associate, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, VHN for the purposes of payment, treatment or health care operations as those terms are defined in the HIPAA Privacy Rule, provided that such use or disclosure would not violate the HIPAA Privacy Rule or applicable Florida law, if done by VHN or the minimum necessary policies and procedures of the VHN.

- b. Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances in writing 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.
- c. Business Associate may use PHI to provide Data Aggregation services to VHN as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- d. Business Associate may use PHI to report violations of the HIPAA Privacy and Security Rules to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(U)(1).
- e. Business Associate may de-identify PHI in accordance with the requirements of the Privacy Rule; provided that all identifiers are destroyed or returned in accordance with this Agreement.
- f. Business Associate may create a Limited Data Set for the purpose of performing its obligations and services for VHN, provided that Business Associate otherwise complies with the provisions of this Agreement.

**5. Obligations of VHN**

- a. VHN shall notify Business Associate in writing of any limitation(s) in its notice of privacy practices of VHN in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. VHN shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. VHN shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that VHN 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 PHI.
- d. VHN shall be responsible for communications with Individuals and third-parties regarding restrictions on uses and disclosures of PHI, amendments or corrections to PHI, and accountings of disclosures requested by Individuals.
- e. VHN shall not request Business Associate to use PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by VHN, except as otherwise expressly permitted herein.

**6. Term and Termination**

- a. The term of this Agreement shall terminate when all of the PHI provided by VHN to Business Associate, or created or received by Business Associate on behalf of VHN, is destroyed or returned to VHN, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in Section 7, Effect of Termination.
- b. Upon either party's knowledge of a material breach of this Agreement by the other party (the "breaching party"), the first party shall either:
  - (1) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement and any Underlying Agreement if the breaching party does not cure the breach or end the violation within a reasonable time, as specified by the first party; or

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- (2) Immediately terminate this Agreement and any Underlying Agreement(s) if the breaching party has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, the first party shall report the violation to the Secretary and mitigate harm to the extent feasible.

**7. Effect of Termination**

- a. Except as provided in paragraph (b) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from VHN, or created or received by Business Associate on behalf of VHN. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to VHN written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI, which shall be for a period of at least six years. VHN hereby acknowledges and agrees that infeasibility includes Business Associate's need to retain PHI for purposes of complying with its work product documentation standards, and that for such a retention, no further notification or approval of VHN is required.

**8. Miscellaneous**

- a. Any notice or other written communications required or permitted to be given to the other party under this Agreement must be addressed to the attention of the other party in care of the contact person identified below. Written notice may be delivered by certified mail or overnight mail.

If to Business Associate:

Art Wilmes  
Milliman, Inc.  
111 Monument Circle, Suite 601  
Indianapolis, Indiana 46204

If to VHN:

Robert L. Williams, Executive Director  
Volusia Health Network  
303 North Clyde Morris Blvd.  
Daytona Beach, Florida 32114-2830

- b. A reference in this Agreement to a section in the HIPAA Privacy Rule or Security Rule means the section as in effect or as amended.
- c. This Agreement may only be amended in a written document signed by an authorized representative of each party. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for VHN to comply with the privacy and security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement and any Underlying Agreement that involves the use or disclosure of PHI may be terminated upon written notice.
- d. The respective rights and obligations of Business Associate under Section 7, Effect of Termination, shall survive the termination of this Agreement.
- e. Any ambiguity in this Agreement shall be resolved to permit VHN and Business Associate to comply with the HIPAA Privacy Security Rules.
- f. Business Associate agrees to indemnify and hold harmless VHN and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including reasonable attorney fees resulting from or arising out of or in connection with a breach of this Agreement by Business Associate.
- g. To the extent permitted by law, VHN agrees to indemnify and hold harmless Business Associate and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including attorney fees resulting from or arising out of or in connection with a use or disclosure of PHI by VHN, or agents of VHN in violation of this Agreement.

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- h. In the event that Florida law is more stringent than a HIPAA standard, requirement or implementation specification, Business Associate's activities and obligations shall be governed by Florida law. For purposes of this paragraph, "more stringent" has the same meaning as the term "more stringent" in 45 CFR § 160.202. If a provision of this agreement is in conflict with a provision of the Underlying Agreement, this Agreement shall govern when the provision relates to either VHN's or the Business Associate's obligations under HIPAA and the HITECH Act.
- i. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything confer upon any person other than the VHN, Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities.
- j. This Agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.
- k. Business Associate and VHN are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Business Associate and VHN. Neither Business Associate nor VHN will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement

**Agreed to:**

By Milliman, Inc.:

Art Wilmes

Signature

Arthur L. Wilmes

Printed Name

Principal and Consulting Actuary

Title

May 18, 2016

Date

By Volusia Health Network

S. R.

Signature

Eric M. Petrow

Printed Name

VHN Executive Director

Title

5/16/16

Date