

HSHS BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement, ("Agreement") is entered into on the date(s) set forth below by and between Hospital Sisters Health System on its own behalf and on behalf of all its affiliated hospitals and entities, the "Covered Entity") and Milliman, Inc. (the "Business Associate") (each a "Party" and collectively the "Parties"). This Agreement shall be effective as of the date on which the last of the Parties has executed this Agreement ("Effective Date").

BACKGROUND AND RECITALS

The purpose of this Agreement is to enable the Parties to comply with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-1329d-8), as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH"), and all applicable implementing regulations, including, without limitation, the Privacy Rule, the Security Rule and the Breach Notification Rule (as those terms are defined below) (all such laws and regulations shall be collectively referred to herein as "HIPAA").

WHEREAS, Covered Entity and Business Associate entered into one or more contracts and relationships between, written or unwritten, formal or informal, (each an "Arrangement" and collectively the "Arrangements") pursuant to which Business Associate agrees to perform certain services on behalf of Covered Entity (the "Services").

WHEREAS, Business Associate may create, access, receive, maintain or transmit Covered Entity's Protected Health Information (as defined below) in its performance of the Services; and

WHEREAS, both Parties are committed to complying with HIPAA.

NOW THEREFORE, the Parties agree as follows:

Section 1. **Definitions.** Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in HIPAA.

- 1.1 **Breach Notification Rule.** "Breach Notification Rule" means the regulations for Breach Notification for Unsecured Protected Health Information published in the Federal Register on January 25, 2013.
- 1.2 **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R § 160.103, and in reference to the party to this Agreement shall mean the Party set forth in the opening paragraph of this Agreement.
- 1.3 **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R § 160.103, and in reference to the party to this Agreement shall mean the Party set forth in the opening paragraph of this Agreement.
- 1.4 **ePHI.** "ePHI" shall mean Electronic Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the information that Business Associate creates, accesses, receives, maintains, or transmits on behalf of Covered Entity, in connection with the applicable Arrangement.

- 1.5 **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R Parts 160 and 164.
- 1.6 **PHI.** "Protected Health Information" or "PHI" shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the information that Business Associate creates, accesses, receives, maintains, or transmits on behalf of Covered Entity in connection with the applicable Arrangement. PHI includes ePHI.
- 1.7 **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and 164, Subparts A and E, as currently in effect.
- 1.8 **Security Rule.** "Security Rule" shall mean the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. Parts 160 and 164, Subpart C, as currently in effect.

Section 2. General Obligations.

- 2.1 As of the Effective Date, this Agreement applies to all past, present, and future Arrangements, in any form whatsoever. This Agreement amends all existing Arrangements between Covered Entity and Business Associate relating to the Use or Disclosure of PHI, whether or not specifically referenced therein. In the event of any conflict or inconsistency between the provisions of this Agreement and the terms of any other Arrangement between Covered Entity and Business Associate relating to PHI, the provisions of this Agreement shall govern unless the Parties specifically agree to the contrary in writing.

Section 3. Scope of Permitted Uses and Disclosures.

- 3.1 Business Associate agrees that it will not use and/or disclose PHI other than as permitted or required by this Agreement, as required to perform the Services, or as otherwise Required by Law. Business Associate is permitted to use or disclose PHI as set forth below:
 - (a) Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
 - (b) Disclose PHI for the proper management and administration of Business Associate, provided that such Disclosures are Required by Law or Business Associate obtains a written confidentiality agreement from the person to whom the information is disclosed, obligating such person to (i) keep the information confidential, (ii) use or further disclose the information only as Required by Law or for the purpose for which it was disclosed to the person and (iii) notify Business Associate of any instances of which it is aware in which the confidentiality of the information may have been breached within a time frame that permits Business Associate to comply with its reporting obligations set forth in Section 6 below;

- (c) Use PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity if required or permitted under an Arrangement;
 - (d) Create a Limited Data Set for the purpose of performing the Services for Covered Entity, provided that Business Associate otherwise complies with the provisions of this Agreement; and
 - (e) De-identify PHI in accordance with 45 C.F.R § 164.514(a)-(c), if permitted by an Arrangement.
- 3.2 Business Associate may disclose PHI to, and permit the use of PHI by, its workforce including employees, contractors, Subcontractors, agents, or other representatives only if and to the extent directly related to, and necessary for, the performance of the Services. Disclosure of PHI to, and the use of PHI by, contractors, Subcontractors, agents and other representatives is also subject to Section 4 below.
- 3.4 Business Associate represents and warrants that it shall comply with the minimum necessary requirements of the Privacy Rule in requesting, using or disclosing PHI to perform the Services, or when doing so in accordance with the Privacy Rule for Business Associate's proper management and administration or to carry out its legal obligations.
- 3.5 Business Associate shall not use or disclose PHI in a manner (i) that is inconsistent with Covered Entity's obligations under HIPAA or (ii) that would violate HIPAA if disclosed or used in such a manner by Covered Entity, except as otherwise expressly permitted in Section 3.1 above.
- 3.6 Business Associate shall not receive direct or indirect payment in exchange for PHI.
- 3.7 To the extent this Agreement or the Arrangements requires Business Associate to carry out any of Covered Entity's obligations under the Privacy Rule, Business Associate agrees to comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- 3.8 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except as otherwise permitted herein for purposes of Data Aggregation.

Section 4. Use by and Disclosure to Business Associate's Contractors, Subcontractors, Agents, and Representatives.

- 4.1 In accordance with 45 C.F.R §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall require each contractor, Subcontractor, agent, or other representative to whom it provides PHI in connection with the Services, or who create, access, receive, maintain or transmit PHI on behalf of Business Associate to enter into a written agreement with Business Associate, prior to the receipt of PHI, obligating them to adhere to at least the same restrictions and conditions on the Use and/or Disclosure of PHI that apply to

Business Associate under this Agreement, including, without limitation, its reporting obligations set forth in Section 6 below. Business Associate shall maintain, and provide to Covered Entity upon request, a list of all contractors, Subcontractors, agents or other representatives who access, create, receive, maintain or transmit PHI and a description of the PHI being accessed, created, received, maintained or transmitted by each such contractor, Subcontractor, agent or other representative. If Business Associate has workforce members, Subcontractors or agents located outside the United States, Business Associate will not disclose PHI to such workforce members, Subcontractors or agents without first obtaining Covered Entity's written permission.

Section 5. Safeguards for the Protection of Health Information Provisions.

- 5.1 Business Associate shall implement appropriate administrative, technical and physical safeguards to prevent Use or Disclosure of PHI other than as permitted by this Agreement. In addition, Business Associate acknowledges and agrees that it is, and for purposes of this Agreement, shall be at all times, fully compliant with all aspects of the Security Rule and has fully implemented Administrative Safeguards, Technical Safeguards, and Physical Safeguards that reasonably and appropriately preserve the Confidentiality, Integrity, and Availability of the ePHI that Business Associate creates, accesses, receives, maintains, or transmits on behalf of Covered Entity. To prevent any non-permitted or violating Use or Disclosure of ePHI, Business Associate will document and keep these safeguards current, and maintain, at all times, documentation of a current and completed security risk assessment. Business Associate shall document such information about safeguards as Covered Entity may from time to time request.
- 5.2 If Business Associate conducts Standard Transactions for or on behalf of Covered Entity, Business Associate will comply, and will require each contractor, subcontractor, agent or representative involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate will not enter into, or permit its contractors, Subcontractors, agents or representatives to enter into any trading partner agreement in connection with the Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, Data Condition, or use of a Data Element or Segment in any Standard; (ii) adds any Data Elements or Segments to the maximum defined Data Set; (iii) uses any code or Data Elements that are marked "not used" in the Standard's Implementation Specification(s) or are not in the Standard's Implementation Specification(s); or (iv) changes the meaning or intent of the Standard's Implementation Specification(s).

Section 6. Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.

- 6.1 Business Associate will report to the Privacy Officer of Covered Entity, in writing, any acquisition, access, Use or Disclosure of PHI that is not permitted or required by this Agreement, without unreasonable delay, but in no event more than five (5) calendar days after discovery by Business Associate of such unauthorized acquisition, access, Use or Disclosure. This reporting obligation shall include acquisitions, access, Uses or Disclosures by Business Associate, its employees, contractors, Subcontractors, agents, representatives or any third party to which Business Associate disclosed PHI. Without

limiting the foregoing, Business Associate shall report the acquisition, access, Use or Disclosure even if it determines that there is a low probability that the PHI has been compromised.

- 6.2 Business Associate, in accordance with 45 C.F.R § 164.410, shall report, in writing, to the Privacy Officer of Covered Entity any Security Incident involving ePHI of which it becomes aware, without unreasonable delay, but in no event more than five (5) calendar days after Business Associate becomes aware of the Security Incident that: (i) results in unauthorized access, Use, Disclosure, modification or destruction of ePHI or interference with system operations; or (ii) does not result in unauthorized access, Use, Disclosure, modification or destruction of ePHI or interference with system operations ("Unsuccessful Security Incident") but that Business Associate reasonably determines is of a type or pattern that warrants further action. Notwithstanding the foregoing, the Parties acknowledge and agree that this Section 6.2 of the Agreement constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents that are not of a type or pattern that warrant further action. If the HIPAA regulations are amended to remove the requirement to report Unsuccessful Security Incidents, the requirement hereunder to report such Unsuccessful Security Incidents will no longer apply as of the effective date of the amendment.
- 6.3 Business Associate will report to the Privacy Officer of Covered Entity, in writing, any Breach of Unsecured PHI, without unreasonable delay, but in any event no more than five (5) calendar days (or any shorter period required under applicable state law) after discovery by Business Associate of such Breach. This reporting obligation shall include Breaches by Business Associate, its employees, contractors, Subcontractors, agents and/or representatives.
 - (a) Each report of a Breach will contain all available information, including: (i) the nature of the non-permitted or violating Use or Disclosure; (ii) the PHI used or disclosed; (iii) who made the non-permitted or violating Use or Disclosure; (iv) who received the non-permitted or violating Use or Disclosure; (v) what corrective action Business Associate took or will take to prevent further non-permitted or violating Uses or Disclosures; and (vi) what Business Associate did or will do to mitigate any harmful effect of the non-permitted or violating Use or Disclosure; and (vii) such other information as Covered Entity may request. In the event all information concerning a Breach cannot be obtained within the time frames described in this Section 6.3, Business Associate shall supplement its previous report as soon as information becomes available.
 - (b) Covered Entity shall have responsibility for notifying individuals in the event of a Breach caused by or related to Business Associate's acts, errors or omissions. Business Associate shall be responsible for any and all reasonable out-of-pocket costs associated with the Breach, including, but not limited to, credit monitoring and attorneys' fees.
- 6.4 Business Associate will work diligently and cooperatively with Covered Entity to establish procedures and to take appropriate steps to mitigate, to the extent reasonably

possible, any harmful effects that are known to Business Associate of any Breach or unauthorized acquisition, access, Use and/or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement. Business Associate shall be reasonably cooperative with Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its PHI, including complying with reasonable corrective action plans.

Section 7. Additional Responsibilities of Business Associate with Respect to PHI.

- 7.1 Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the Use and Disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to Covered Entity (upon Covered Entity's written request) and/or to the Secretary, within five (5) business days of receiving such request, or as designated by the Secretary, for purposes of determining Covered Entity's compliance with HIPAA and this Agreement. Business Associate shall, if legally permissible, promptly notify Covered Entity of communications with HHS regarding PHI and shall provide Covered Entity with copies of any information Business Associate has made available to the Secretary or HHS under this provision.
- 7.2 If it has made any disclosures subject to disclosure accounting requirements, Business Associate shall make available to Covered Entity the information in Business Associate's possession required for Covered Entity to make an accounting of Disclosures required by 45 C.F.R. § 164.528 within five (5) business days of notice by Covered Entity to Business Associate that it has received a request for an accounting of Disclosures of PHI. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the Disclosure, (ii) the name of the entity or person who received the PHI, and, if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such Disclosure that includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within five (5) business days, forward such request to Covered Entity.
- 7.3 Business Associate agrees, within five (5) business days of receiving a request from Covered Entity, to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 C.F.R. § 164.524.
- 7.4 Business Associate agrees, within five (5) business days of receiving a request from Covered Entity, to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526.
- 7.5 Business Associate shall retain all information required to be retained under this Agreement, including PHI, throughout the term of this Agreement, shall continue to maintain such information, and shall make it available to Covered Entity upon request, for a period of six (6) years after the termination of this Agreement, unless Covered Entity and Business Associate agree otherwise.
- 7.6 In the event Business Associate receives a subpoena or similar notice or request from any

judicial, administrative or other party which would require the production of PHI received from, or created for, Covered Entity, Business Associate shall, if legally permissible, promptly forward a copy of such subpoena, notice or request to Covered Entity to afford Covered Entity the opportunity to timely respond to the demand for its PHI as Covered Entity determines appropriate.

Section 8. Term and Termination.

- 8.1 This Agreement shall remain in effect from the Effective Date until terminated pursuant to Section 8.2 or without cause upon either party providing thirty (30) calendar days' advance written notice of its intent to terminate this Agreement.
- 8.2 Covered Entity may immediately terminate this Agreement (and any then-existing Arrangement(s) with Covered Entity) if Covered Entity makes the determination that Business Associate has failed to adhere to a material term of this Agreement. Alternatively, Covered Entity may, in its sole discretion: (i) exercise any of its rights to reports, access and inspections under this Agreement; (ii) require Business Associate to submit to a plan of monitoring and report as Covered Entity may determine necessary to maintain compliance with this Agreement; and/or (iii) provide Business Associate with thirty (30) calendar days to cure or end the violation. In the event Business Associate fails to cure the material deficiency or end the violation within such time period, Covered Entity may immediately terminate this Agreement and any then-existing Arrangement(s). Covered Entity may also provide notice of infractions to the Secretary or Office of Civil Rights and may be required to follow notice requirements prescribed by 45 C.F.R. §164.404.
- 8.3 Upon termination of this Agreement, for any reason, Business Associate shall recover any PHI in the possession of its permitted Subcontractors, agents, or representatives and shall, at Business Associate's expense, return to Covered Entity or destroy all PHI within thirty (30) calendar days of conclusion of this Agreement. If it is not feasible for Business Associate to return or destroy the PHI as described above, Business Associate shall notify Covered Entity in writing. The notification shall include (i) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If Covered Entity agrees, in its reasonable discretion, that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall extend the protections, limitations and restrictions contained in this Agreement to such PHI and limit further Uses or Disclosures of such PHI to the purposes that makes the return or destruction of the PHI infeasible for so long as Business Associate maintains such PHI. If Covered Entity does not agree, in its reasonable discretion, that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall, at Business Associate's expense, return or destroy the PHI within thirty (30) calendar days of receiving notice of such determination by Covered Entity. Covered Entity 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 Covered Entity is required.

- 8.4 Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or any other conclusion of this Agreement or all Arrangements.

Section 9. Notices.

- 9.1 All notices and other communications under this Agreement must be given in writing and shall be deemed received: (i) when delivered personally; (ii) 72 hours after being deposited in the U.S. mail, postage prepaid, sent registered or certified mail, return receipt requested; (iii) when delivered by a nationally-recognized and receipted overnight courier service; or (iv) when delivered via facsimile transmission, to the Party at its respective principal business location. No notice of a change of address shall be effective until received by the other Party. Any notices required under this Agreement shall be provided as follows:

To Covered Entity: HSHS

Attention: Privacy Officer

To Business Associate: Milliman, Inc.

1301 Fifth Ave., Suite 3800

Seattle, WA 98101

Section 10. Indemnification and Injunctive Relief.

- 10.1 Each party shall indemnify and hold harmless the other party and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including, but not limited to, reasonable attorneys' fees incurred by the indemnified party arising from a violation by the indemnifying party of its obligations under this Agreement.
- 10.2 To the extent that Business Associate has limited its liability under the terms of an Arrangement or some other document, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate's breach of its obligations under this Agreement.

10.3 Business Associate acknowledges and stipulates that its unauthorized Use or Disclosure of PHI while performing the Services pursuant to this Agreement could cause irreparable harm to Covered Entity and, in such event, Covered Entity shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorneys' fees, for any such breach of the terms and conditions of this Agreement.

Section 11. Amendment to this Agreement.

11.1 This Agreement shall be automatically amended to implement the requirements of any amendment to HIPAA or other applicable state or federal laws and ensure that the Parties remain in compliance with the law, effective upon the effective date of any such amendment.

Section 12. Miscellaneous.

12.1 Independent Contractor Status. The Parties agree that in performing the Services and satisfying the obligations of this Agreement, Business Associate shall at all times be an independent contractor for Covered Entity and nothing in this Agreement shall be construed as creating an agency, employment, joint venture, partnership or other relationship. Covered Entity shall neither have nor exercise any control or direction over Business Associate. Business Associate shall avoid taking any action or making any representation or warranty whatsoever with respect to its relationship with Covered Entity that is inconsistent with this independent contractor status.

12.2 Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended.

12.3 No Third-Party Beneficiaries. The Parties have not created and do not intend to create by this Agreement any third-party rights, including, but not limited to, third party rights for patients.

12.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.

12.5 Owner of PHI: Business Associate acknowledges that Covered Entity is the owner of all PHI that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI.

12.6 Conflicts. If there is any direct conflict between an Arrangement and this Agreement with respect to PHI or ePHI, the terms and conditions of this Agreement shall control. 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.

- 12.7 Counterparts; Facsimile and pdf Signatures. The Parties agree that this Agreement may be executed in multiple originals, each of which shall be considered an original for all purposes and, collectively, shall be considered to constitute this Agreement. The Parties further agree that signatures transmitted by facsimile or in Portable Document Format (pdf) may be considered an original for all purposes, including, without limitation, the execution of this Agreement and enforcement of this Agreement.
- 12.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by duly authorized officers in its name and on its behalf.

COVERED ENTITY: HSHS

By: Melinda Clark
Print Name: Melinda Clark
Print Title: CEO
Date: 01/28/17

BUSINESS ASSOCIATE: Milliman, Inc.

By: Rich Moyer
Print Name: Rich Moyer
Print Title: Principal
Date: 01/21/2017