

**EXHIBIT A**  
**HIPPA BUSINESS ASSOCIATE AGREEMENT**

This Exhibit contains the terms and conditions governing the Provider's access to and use of Protected Health Information and provides the permissible uses and disclosures of protected health information by the Provider, also called the "Business Associate."

**Section 1. Definitions**

1. "*Business Associate*" shall have the meaning given to the term "Associate" under the Privacy Rule, including but not limited to, 45 CFR Section 160.103.
2. "*Covered Entity*" shall generally have the same meaning given to such term under the Privacy Rule, including but not limited to, 45 CFR Section 160.103, and for the purposes of this Exhibit shall refer to MHP Salud.
3. "*Data Aggregation Services*" shall mean the combining of PHI or ePHI by Business Associate with the PHI or ePHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of, payment to, and treatment of patients by the respected covered entities.
4. "*Electronic Protected Health Information*" or "*ePHI*" shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, and 164, and under HITECH.
5. "*Privacy Rule*" shall mean the HIPAA Regulations that are codified at 45 CFR Parts 160, 162 and 164.
6. "*Security rule*" shall mean the HIPAA Regulations that are codified at 45 CFR Part 164.
7. "*Protected Health Information*" or "*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 an individual; the provision of healthcare 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 meaning given to such term under the Privacy Rule, including but not limited to, 45 CFR Section 164.501. [45 CFR 160.103 and 164.501].
8. The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). The U.S. Department final rule at 74 Fed. Reg. 42,740 implements the security breach notice provision of HITECH.

## Section 2. **Obligations and Activities of Business Associate**

Business Associate shall maintain the security and confidentiality of PHI received from or created on behalf of Covered Entity as required by applicable laws and regulations, including HIPAA and HITECH, the regulations promulgated thereunder, and applicable state law. Without limiting the foregoing, Business Associate agrees to the following:

1. Use of PHI: Business Associate shall not use, and shall ensure that its directors, officer, employees, contractors, and agents, do not use PHI other than as expressly permitted by this Agreement or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule if so used by Covered Entity, except that Business Associate may use PHI for the purposes of managing and administering its internal business process relating to its responsibilities under this Agreement and to carry out the legal responsibilities of the Business Associate as set forth therein. In addition, Business Associate may use PHI to provide data aggregation services relating to health care operations of the Covered Entity, if Covered Entity elects to receive such services.
2. Disclosure of PHI:
  - a. *Disclosure to Third Parties.* Business Associate shall not [and shall provide that its directors, officer, employees, subcontractors, and agents, do not] disclose PHI to any other person (other than members of their respective workforce as specified in subsection b. of this Section), unless disclosure is required by law or authorized by the person whose PHI is to be disclosed. Any such disclosure other than as specifically permitted in the immediately preceding sentences shall be made only if such disclosee has previously signed a written agreement that:
    - i. Binds the disclosee to the provision of this Agreement pertaining to PHI, for the express benefit of Covered Entity, Business Associate and, if disclosee is other than Business Associate, the disclosee;
    - ii. Contains assurance from disclosee that the PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to disclosee; and
    - iii. Obligates disclosee to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent disclosee has obtained knowledge of such breach.
  - b. *Disclosure to Workforce.* Business Associate shall not disclose PHI to any member of its workforce and shall provide that its subcontractors and agents do not disclose PHI to any member of their respective workforces, unless Business Associate or such under this agreement, and of the consequences for such person and for Business Associate

or such subcontractor or agent of violating them. Business Associate shall take and shall provide that each of its subcontractors and agents take appropriate disciplinary action against members of the respective workforces who use or disclose PHI in contravention of this Agreement.

- c. *Disclosure for Marketing Purposes.* Business Associate shall not use or disclose PHI for any marketing purpose without the written authorization of the Board of Directors of the Covered Entity. Further, the Business Associate may not sell PHI provided by Covered Entity for any purpose or share such PHI with any third party for marketing purposes unless the Board of Directors of Covered Entity agrees in writing to engage in such activities. In this instance, this Agreement will be amended to reflect the use of PHI provided by Covered Entity for these purposes. The Business Associate must disclose any remuneration received in exchange for PHI.
  - d. *Disclosure for Fundraising Purposes.* Business Associate may not sell PHI provided by Covered Entity for any purpose or share such PHI with any third party for fundraising purposes unless the Board of Directors of Covered Entity agrees in writing to engage in such activities. In this instance, this Agreement will be amended to reflect the use of PHI provided by Covered Entity for these purposes. The Business Associate must disclose any remuneration received in exchange for PHI.
  - e. *Disclosure for Research Purposes.* Any program or project in which individually identifiable data that includes data obtained from the Covered Entity is requested by researchers or entities that are not participants in this Agreement must be regarded as research that must be approved in writing in advance by the Covered Entity.
3. **HIPAA Safeguards:** Business Associate shall implement all appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall provide Covered Entity with such information concerning such safeguards as Covered entity may from time-to-time request. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Covered Entity's PHI and ePHI Business Associate shall have formal written agreements with any subcontractor with whom Covered Entity's PHI is shared, and shall provide Covered Entity with the names of said subcontractors if requested by Covered Entity.
4. **Accounting of Disclosures:**
- a. Business Associate shall maintain a record of all PHI disclosures made under this Agreement, including the date of disclosure, the name, and if known, the address of the recipient of PHI, a brief description of the PHI disclosed, and the purposes of the disclosures.
  - b. Within ten (10) days of notice by Covered Entity to Business Associate that Covered Entity has received a request for an accounting of disclosures of PHI regarding and individual, Business Associate and its agents or subcontractors shall make available to Covered Entity such information as in Business Assoc possession and that is required for Covered Entity to make the accounting.

- c. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall prepare and deliver any such accounting requested in accordance with the requirements of 45 CFR Section 164.528.

**5. Reporting Disclosures of Protected Health Information in violation of HIPAA:**

Business Associate shall, within three (3) days of becoming aware of a disclosure of PHI or ePHI in violation of the Agreement by Business Associate, (its officers, directors, employees, contractors, or agents,) or by a third party to which Business Associate disclosed PHI, report such disclosure in writing to the Covered Entity and the remedial action taken or proposed to be taken with respect to such use or disclosure. Business Associate shall take all commercially reasonable action to mitigate any harm caused by inappropriate disclosure.

**6. Reporting Breaches of Protected Health Information in violation of HITECH:**

Business Associate shall:

- a. Secure PHI (including data in motion, data at rest, data in use, and data disposed) created by Business Associate, or accessed, maintained, retained, modified, recorded, stored, destroyed, or otherwise held, used, or disclosed by Business Associate, on behalf of Covered Entity, by encrypting such ePHI in accordance with the Department of Health and Human Services Guidance at <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/administrative/securityrule/techsafeguards.pdf?language=es> (“HHS Guidance”) and the National Institute Standards and Technologies (“NIST”) at <https://www.nist.gov/sites/default/files/nist800111.pdf> to render such information unusable, unreadable, or indecipherable to unauthorized individuals. Business Associate understands and agrees that ePHI is encrypted as specified in the HIPAA Security Rule by the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without the use of a confidential process or key and such confidential process or key that might enable decryption has not been breached. To avoid a breach of the confidential process or key, these decryption tools shall be stored by Business Associate on a device or at a location separate from the data that are used to encrypt or decrypt.
- b. In the event that Business Associate uses a method other than encryption or an encryption algorithm that is not specified in the Guidance or NIST Standards and Technologies to secure the ePHI as referenced in Subsection 1 above, such ePHI shall be considered to be ‘unsecured’ in accordance with HITECH.
- c. Under HITECH, a breach occurs when there is an unauthorized acquisition, access, use or disclosure of unsecured PHI, including ePHI, which compromises the security or privacy of the PHI/ePHI. It is presumed that a breach has occurred unless the Covered Entity or Business Associate can demonstrate there is a low probability that the security or privacy of PHI/ePHI has been compromised. For purposes of this Agreement identified, the term ‘compromise’ means inappropriately viewed, re-disclosed, or otherwise misused PHI.

- d. Business Associate Agrees to:
    - i. Implement a system to detect breaches of PHI/ePHI within the Business Associate's Business;
    - ii. Maintain written documentation with respect to all suspected and confirmed breaches for six (6) years.
    - iii. Provide access to such documentation to the Covered Entity upon request.
    - iv. Develop breach notification policies and procedures.
    - v. Train workforce members on, and have sanctions for failure to comply with, these policies and procedures; and
    - vi. Allow workforce members to file complaints regarding these policies and procedures or a failure to comply with them, and refrain from intimidating or retaliatory acts towards its workforce members.
  - e. In the event that there is a breach of unsecured PHI/ePHI, Business Associate agrees to:
    - i. Notify Covered Entity on the first day that a breach is known to Business Associate, or by exercising reasonable diligence, would have been known to Business Associate;
    - ii. Provide Covered Entity, to the extent possible, with the identity of each individual whose unsecured PHI/ePHI has been, or is reasonably believed to have been, breached;
    - iii. Cooperate in conducting a risk assessment, as instructed by, and under the direction of, of Covered Entity, to determine whether the privacy or security of individual's PHI/ePHI was compromised as a result of the breach, and
    - iv. Mitigate any harm to individuals whose PHI/ePHI.
  - f. Business Associate agrees to comply with the HIPAA obligations of Paragraph 5 above related to unauthorized use and disclosures of PHI.
  - g. Business Associate agrees to destroy all paper, film, or other hard copy media by shredding or destruction, and destroy electronic media by clearing, purging or destruction consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the PHI cannot be retrieved.
7. **Agreements by Third Parties:** Business Associate shall enter into a written agreement with any agent or subcontractor that will have access to PHI or ePHI that is received from or created or received by Business Associate on behalf of Covered Entity pursuant to which, such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate pursuant to this Agreement.

8. **Disclosure to U.S. Department of Health and Human Services:** Business Associate shall make its internal practices, books, and records relating to the use and disclosures of PHI available to the Secretary of the United States Department of Health and Human Services, for purposes of determining compliance with HIPAA. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary of the United States Department of Health and Human Services.<sup>4</sup>
9. **Access by Individuals:** Within fifteen (15) days of receipt of a request by Covered Entity or an individual, Business Associate shall permit Covered Entity and any individual whose PHI is maintained by Business Associate to have access to and to copy his or her PHI, in the format requested, unless it is not readily producible in such format, in which case it shall be produced in hard copy format.
10. **Amendment of PHI:** Within fifteen (15) days of receipt of a request from Covered Entity for an amendment of PHI, or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable the Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to 45 CFR Section 164.526. If any individual requests an amendment of PHI directly from Business Associate, Business Associate must notify Covered Entity in writing within five (5) days of the request.
11. **Minimum Necessary:** Business Associate and its agents or subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure in accordance with 45 CFR 164.514(d)(3).
12. **Data Ownership:** Business Associate acknowledges that Business Associate has no ownership right with respect to PHI provided by Covered Entity.
13. **Term:** This Agreement shall be effective for a term of 12 months and shall be automatically renewed for successive one (1) year terms provided either party does not notify the other in writing at least ninety (90) days prior to the expiration of the then-current term of its desire to terminate this Agreement. The parties' obligation to comply with the Privacy and Security Standards associated with this Agreement shall survive the expiration or termination of the Agreement.
14. **Termination:** If the Covered Entity becomes aware of a pattern of activity or practice that constitutes a material breach or violation of the obligations under the provisions of the Agreement, the Covered Entity has the option to terminate the Agreement upon demanding a cure within ten (10) days of obtaining such knowledge. If the Business Associate fails to cure such breach within the ten (10) days period, the Covered Entity has the right to terminate the Agreement immediately. Any breaches or violations of the obligations under this Agreement are subject to the indemnification provisions set forth in Section II, Paragraph 15, herein, and such indemnification obligations shall survive the termination of the Agreement.
15. **Procedure Upon Termination:** Upon termination of the Agreement, if feasible, Business Associate, and its subcontractors or agents, shall return or destroy all PHI (as requested by

Covered Entity) that it maintains in any form, and shall retain no copies of such information; or, if Covered Entity determines that return or destruction is not feasible, Business Associate shall continue to extend the protections of this Agreement to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible. If the Covered Entity elects to destroy the PHI, Business Associate shall certify in writing to the Covered Entity that such PHI has been destroyed. The Business Associate shall continue to extend the protections of this Agreement to any information that remains in the Business Associate's possession after termination, if any, and the applicable provision of this Agreement relating to protecting such remaining information shall survive termination of this Agreement.

16. **Liability:** The Business Associate and its subcontractors are directly liable under the HIPAA Rules for the following:
  - a. Impermissible uses and disclosures (i.e. comply with the terms of the business associate agreement and, generally, not using or disclosing PHI in a manner that would be impermissible if done so by the Covered Entity);
  - b. Failure to provide breach notification to Covered Entity;
  - c. Failure to provide access to a copy of electronic PHI to either the Covered Entity or an individual or such individual's designee
  - d. Failure to disclose PHI when required by the Secretary to investigate or determine the Business Associate's compliance with HIPAA Rules;
  - e. Failure to provide an accounting of disclosures;
  - f. Engaging in intimidating, or discriminating acts against those who make complaints, cooperate with regulators, or oppose unlawful actions;
  - g. Failure to have written agreements with subcontractors; and
  - h. Failure to comply with the requirements of the HITECH and HIPAA Security Rule.
  
17. **Indemnification:** To the extent caused by such party, the parties agree to indemnify, defend, and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from any negligence or wrongful acts or omissions by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce during its performance of this Agreement. The indemnifying party shall reimburse for all actual and direct losses, liabilities, fines, penalties, costs or expenses including reasonable attorney fees, which may be imposed as a result of an indemnifying party's actions except that no consequential or punitive damages shall be recoverable. The parties' obligation to indemnify shall survive the expiration or termination of the Agreement.
  
18. **No Third Party Beneficiaries:** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
  
19. **Effect on Agreement:** Except as specifically required to implement the purposes of this Agreement or to the extent inconsistent with the Agreement, all other terms of the Agreement shall remain in force and effect.

### Section 3. **Permitted Uses and Disclosures by Business Associate**

The Business associate may only use or disclose protected health information covered under this Exhibit as listed below:

1. The Business Associate may use and disclose MHP Salud PHI and/or ePHI received or created by Business Associate in performing its obligations pursuant to this Exhibit.
2. The Business Associate may use MHP Salud's PHI and/or ePHI received or created by Business Associate for archival purposes.
3. The Business Associate may use PHI and/or ePHI created or received in its capacity as a Business Associate of MHP Salud for the proper management and administration of the Business Associate if such use is necessary for the proper management and administration of business associate or to carry out the legal responsibilities of Business Associate.
4. The Business Associate may disclose PHI and/or ePHI created or received in its capacity as a Business Associate of MHP Salud for the proper management and administration of the Business Associate if the disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the PHI and/or ePHI is disclosed that it will be held confidentially 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 agrees to notify the Business Associate of any instances of which it becomes aware in which the confidentiality and security of the PHI and/or ePHI has been breached.
5. Follow the guidance in the HIPPA Rule regarding marketing, fundraising, and research located at Sections 45 CFR §164.501, 45 CFR §164.508, and 45 CFR §164.514.

### Section 4. **Miscellaneous**

1. **Notice:** All notices, requests, demands, and other communications required or permitted to be given hereunder shall be sent by (a) certified mail, return receipt requested, or (b) by facsimile to the parties, or (c) commercial carrier that provides a signed receipt verifying actual delivery at the address set forth below. Such notices shall be deemed given five (5) business days after being deposited in the United States mail or when receipt acknowledged, if sent by facsimile:
2. **Governing Law:** This Agreement shall be construed, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the State of Texas.
3. **Titles and Headings:** Titles and headings to sections herein are for purposes of reference only, and shall in no way limit, define, or otherwise affect the provisions herein.
4. **Entire Agreement:** This Agreement, including any exhibits presently or subsequently attached hereto, constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior agreements, whether written or oral, between the parties and the subject matter hereto.

5. **No Third Party Rights:** The parties agree that it is their specific intention to create no third-party rights by virtue of the Agreement.
6. **Reference to Time:** All reference to days in this Agreement shall be reference to calendar days, unless expressly stated otherwise.
7. **Independent Contractors:** The parties are and shall be independent contractors to one another, and nothing in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Except as expressly provided herein, neither party shall be liable for any debts, accounts, obligations, or other liabilities of the other party.
8. **Assignment:** This Agreement shall be binding on the parties and their successors and assigns, provided that neither party shall assign any of its rights under this Agreement to any other party without the prior written consent of the other party.
9. **Severability:** In the event that any court or any governmental authority or agency declares all or part of any section of this Agreement to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate any other section of this Agreement, and in the event that only a portion of any section is so declared to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate the balance of such section.
10. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as the date first set forth above.

**COVERED ENTITY**

**MHP SALUD**

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

Name: Colleen Reinert

Title: Chief Program Officer

Date Execution: 6/6/2023

**BUSINESS ASSOCIATE**

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

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

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

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