

# Community Information Exchange Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into by and between HealthierHere and the “Participant” named at the signature page, each a “Party” and collectively the “Parties”. This Agreement shall be effective on the date last signed below, as indicated at the signature page, or the effective date of the Community Information Exchange Participation Agreement (“Participation Agreement”) entered into by the Parties, whichever effective date is earlier.

## RECITALS

WHEREAS, pursuant to the Participation Agreement, HealthierHere will provide Participant with access to the Community information Exchange (“CIE”) and the Parties will receive, use, and disclose Client Information, including Protected Health Information (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) in connection with the CIE pursuant to written Authorizations from the Clients; and

WHEREAS, Participant is subject to the Administrative Simplification requirements of HIPAA, and regulations promulgated thereunder; and

WHEREAS, HIPAA requires Participant, in its role as a Covered Entity under HIPAA, to enter into a contract with HealthierHere, in its role as a Business Associate under HIPAA, in order to mandate certain protections for the privacy and security of PHI, and those regulations prohibit the Disclosure or Use of PHI by or to HealthierHere if such a contract is not in place; and

WHEREAS, the Parties agree to safeguard all Client Information received, used, and disclosed in connection with the CIE in compliance with this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

### 1.0 Compliance with Privacy Laws.

1.1. Parties Mutual Obligation to Comply with Privacy Laws. When accessing, using, or disclosing Client Information, each Party shall observe and comply with the duties and obligations of the Privacy Laws applicable to such Party.

1.2. Effect of this Agreement. This Agreement amends, supplements, and is made a part of the Participation Agreement between the Parties. To the extent the terms and conditions of the Participation Agreement are inconsistent or conflict with the terms of this Agreement, this Agreement shall govern.

## 2.0 Use and Disclosure of Client Information.

2.1. Permitted Uses and Disclosures: Except as otherwise limited in this Agreement, Parties may Use and Disclose Client Information to perform functions, activities, or services for, or on behalf of, Participant as permitted or required by the Participation Agreement or this Agreement, provided such use or disclosure would not violate applicable Privacy Laws, or as required by applicable law.

2.2. Management and Administration. HealthierHere may Use Client Information to properly manage and administer the business of the CIE and carry out the legal responsibilities of operating the CIE. HealthierHere may Disclose Client Information for the proper management and administration of the CIE or to carry out the legal responsibilities of HealthierHere if the Disclosure is required by law, or HealthierHere obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially and Used or further Disclosed only as required by law or for the purpose of which it was Disclosed, and the person notifies HealthierHere of any instances of which it is aware where confidentiality of the information has been breached.

2.3. Data Aggregation. HealthierHere may aggregate and use Client Information in such a way that individual Clients cannot be identified: (i) in order to evaluate effectiveness of the CIE or service delivery, evaluate community needs and gaps in service, or improve CIE-related products and services, if such aggregated Client Information is used only by the CIE or disclosed only to Participant or HealthierHere Subcontractors; (ii) to obtain funding in support of service delivery or other CIE activities if aggregated Client Information is disclosed only to the funding organization within the terms of an agreement that it not be redisclosed; (iii) to report to funding organizations as required by the terms of the agreement under which funding was provided and within terms that it not be redisclosed; or (iv) to help other organizations providing similar services to the CIE learn from our work, and only when approved by the Advisory Group.

2.4. Disclosures to Medicaid Agencies. Notwithstanding anything in the Participation Agreement or this Business Associate Agreement, each party specifically authorizes that the other party may disclose Client Information regarding Medicaid or Apple Health enrollees to the operators of those programs (such as Medicaid agencies, Managed Care companies, and other government agencies and their service providers) to monitor and improve the health of our community and to comply with state and federal laws (including agreements either party are subject to under the Washington State Section 1115 Medicaid demonstration waiver/Medicaid Transformation Project). All such disclosures will be made in accordance with applicable law and regulation and will solely be made to the extent required by contractual requirements imposed on the applicable party by the operator of the Medicaid agency.

2.5. Disclosure for Public Health Activities. HealthierHere may use and disclose Client Information for Public Health Activities if disclosure for a given Public Health Activity has been approved by the Advisory Group or as required by applicable law.

2.6. Data Aggregation for Research. HealthierHere may use and disclose aggregated Client Information for Research purposes of if: (i) the Research has been approved by the Advisory Group; (ii) the Client has provided written Authorization to participate in the Research; and (iii) if aggregated Client Information is disclosed under the terms and limitations specified in that written Authorization.

2.7. Minimum Necessary. Parties shall use or disclose only the minimum necessary amount of Client Information to accomplish the intended purpose of such use or disclosure.

### 3.0 Obligations of the Parties.

3.1. Nondisclosure. Parties shall not use, access, or disclose Client Information other than as permitted or required by the Participation Agreement or this Agreement, provided such use, access, or disclosure would not violate applicable law.

3.2. Safeguards. Parties shall adopt, implement, and update administrative, physical, and technological safeguards that reasonably and appropriately protect the privacy, integrity, and security of Client Information and to comply with the applicable standards of the Privacy Laws and other standards established and specified by HealthierHere in the CIE policies and procedures. The Parties shall have the mutual right to review such privacy and security policies and procedures of the other Party, from time to time, upon not less than five (5) business days' notice to the Party.

3.3. Report Unauthorized Use or Disclosures. Participant shall report to HealthierHere any use or disclosure of Client Information not provided for by the Participation Agreement or this Agreement that is not otherwise required by Law. HealthierHere shall report to Participant any use or disclosure of Client Information of Participant not provided for by the Participation Agreement or this Agreement, whether identified by HealthierHere or reported by one of the other participants of the CIE to HealthierHere, including but not limited to a Breach of Unsecured PHI or Security Incident, as set forth in Section 6.

3.4. Subcontractors. Each Party will take reasonable steps to ensure those of its subcontractors (and their employees or agents) that collect, receive, maintain, or transmit Client Information on behalf of the Party agree to substantially the same restrictions, conditions, and requirements, including but not limited to the requirements for reporting any Security Incidents as apply to such Party herein.

3.5. Client Access to Client Information. HealthierHere shall make all Client Information of Participant stored by the CIE in a Designated Record Set available to Participant within ten (10) days of a written request by the Participant to permit the Participant to satisfy a request by Client for access to a copy of Client Information of Participant under 45 CFR 164.524. In the event that HealthierHere directly receives a request to access Client Information provided to the CIE by Participant, HealthierHere shall forward such request to Participant.

3.6. Amendment of Client Information. Within ten (10) days of receiving a request from Participant, make Client Information stored by the CIE on behalf of Participant in a Designated Record Set available to Participant for the purpose of amendment and incorporate such amendments into the Client Information in accordance with 45 CFR 164.526. In the event that HealthierHere directly receives a request for amendment of Client Information provided to the CIE by Participant, HealthierHere shall forward such request to Participant.

3.7. Accounting to Individual of Disclosures. HealthierHere shall maintain within the CIE, and within twenty (20) days of a written request from Participant, provide an accounting of disclosures of Client Information of Participant maintained in the CIE in accordance with 45 CFR 164.528. In the event that HealthierHere directly receives a request for an accounting of disclosures of Client Information provided to the CIE by Participant, HealthierHere shall forward such request to Participant.

3.8. Compliance Audit. HealthierHere and each Participant shall make internal policies and procedures of the CIE's and Participant's use and disclosure of Client Information available to the other Party upon request for purposes of determining compliance with this Agreement or to investigate any Security Incident. In addition, HealthierHere agrees to make its internal practices, books, and records relating to the Use and Disclosure of PHI on behalf of Participant available to the Secretary of the federal Department of Health and Human Services for purposes of determining Participant's compliance with HIPAA.

3.9. Marketing or Sale of Client Information. Parties shall not directly or indirectly receive remuneration from a third party in exchange for any Client Information. For the avoidance of doubt, this prohibition shall not apply to the fees paid by the Participant for services provided by the CIE under the Participation Agreement.

3.10. Export of Client Information. Parties, their agents, and Subcontractors, shall not perform any services that require the export of Client Information outside the United States of America.

3.11. Notice and Opportunity to Oppose Disclosure. In the event Participant is required by law to disclose Client Information pursuant to a court order or other legal proceeding or investigation, the Participant shall promptly notify HealthierHere of such requirement so as to afford HealthierHere sufficient time to take appropriate action to oppose the disclosure in HealthierHere's sole discretion.

3.12. Compliance with Participant Obligations. To the extent HealthierHere carries out Participant's obligations under HIPAA, HealthierHere shall comply with the requirements of such regulations that apply to Participant in the performance of such obligations.

3.13. Privacy Policy. HealthierHere maintains and publishes, on its web site and/or through other means, a Privacy Policy for the CIE that describes the Client Information that may be collected, stored, used, and shared on the CIE, the obligation of HealthierHere to protect Client Information, how Client Information may be used, and Client rights regarding Client Information.

3.14. Notice of Privacy Practices. Participant must develop and publish a Notice of Privacy Practices that meets, at a minimum, the same restrictions on use and Client rights as set forth in HealthierHere's Privacy Policy for the CIE. HealthierHere may update its Privacy Policy from time to time, and Participant agrees to make updates to its Notice of Privacy Practices as necessary to comply with the Privacy Policy. Participant shall notify HealthierHere of any limitation(s) in the Notice of Privacy Practices of Participant under 45 CFR 164.520, to the extent that such limitation may affect the CIE's use or disclosure of protected health information.

## 4.0 Obligations of Participant.

4.1. Client Authorization. Participant will not disclose or provide to the CIE or HealthierHere Subcontractors any Client Information without written Authorization by the applicable Client.

4.2. Disclosure of Health Information. Participant will only disclose or provide to the CIE or HealthierHere Subcontractors physical health, mental health, or behavioral health information, including substance use treatment information, about a Client if such disclosure or provision is in furtherance of the Permitted Use, as defined in the Participation Agreement, and only with written Authorization of the Client.

4.3. Identification of Health Information. If Participant discloses or provides to the CIE physical health, mental health, or behavioral health information about a Client with written Authorization by the client, the Participant agrees to properly identify the information as health information.

4.4. Obtaining Client Authorization. Participant will verify, through Client Information provided by the CIE, that written Authorization has been obtained and has not expired or been revoked or, in the event Authorization has not been obtained or has expired or been revoked, shall obtain or renew written Authorization from the Client prior to sharing Client Information with the CIE and provide an electronic copy of the Authorization to the CIE.

4.5. Restriction on Use or Disclosure. Participant will immediately provide to the CIE of restriction on the use or disclosure of Client Information requested by a Client and agreed to by the Partner to the extent that such restriction may affect the CIE's (or that of a Subcontractor) use or disclosure of Client Information.

4.6. Revocation of Authorization. Participant will immediately provide to the CIE a Client request to revoke the Client's written Authorization to use or disclose Client Information, and shall obtain written documentation of the Client's request to revoke Authorization and provide an electronic copy of the request to the CIE.

## 5.0 Obligations of HealthierHere.

5.1. Client Authorization. HealthierHere will contractually prohibit other Participants from disclosing a Client's Client Information to the CIE if they have not obtained a written, unrevoked Authorization by the Client.

5.2. Communicating Authorization. The CIE will maintain electronic copies of a Client's written Authorization, and electronic copies of written documentation of a Client's request to revoke Authorization, if any, that have been provided to the CIE as part of Client Information so that Participant can verify that a current, unrevoked Authorization has been obtained prior to disclosing or providing Client Information to the CIE.

## 6.0 Security Incident.

6.1. Security Incidents. Participant shall provide prompt notice to HealthierHere of any Security Incident, but no later than five (5) business days after Participant becomes aware of a Security Incident, affecting Client Information. HealthierHere shall likewise provide prompt notice to Participant of any Security Incident discovered by HealthierHere in connection with the CIE that affects the Participant's Client Information. A Party shall be deemed to be aware of a Security Incident as of the first day on which such Security Incident is actually known or reasonably should have been known by any of its officers, employees, agents, or subcontractors. A "Security Incident" does not include pings and other broadcast attacks on the CIE's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Client Information.

6.2. Investigation and Corrective Action. The Parties will cooperate with each other in good faith in the investigation of the Security Incident. Parties will promptly take such steps as are reasonable to mitigate any harmful effects of such Security Incident. The Party responsible for the Security Incident will notify the other Party, no later than twenty (20) days after discovery of the Security Incident of: (i) the identity of each individual whose Client Information was accessed, acquired, used, or disclosed as a result of the Security Incident; and (ii) actions taken by each Party to mitigate any harmful effect of such Security Incident; (iii) the corrective action such Party has taken or shall take to prevent future similar Security Incidents; and (iv) any other action required by Applicable Laws pertaining to the Security Incident. Participant acknowledges and agrees that HealthierHere is permitted, in its sole discretion, to notify other participants of the CIE whose Client Information is, or may be, affected by a Security Incident.

## 7.0 Term and Termination.

Term. The Term of this Agreement shall commence on the Effective Date and terminate upon the termination of the Participation Agreement.

7.1. Termination for Cause. Either Party may terminate this Agreement (and the Participation Agreement) immediately upon Notice for "Cause." "Cause" shall mean and refer to a Party's failure to cure a material breach of this Agreement within thirty (30) days of notice of such breach.

7.2. Return of PHI Upon Termination. Upon termination of this Agreement, HealthierHere shall return or destroy all PHI received from, or created or received by the CIE on behalf of, Participant that the CIE still maintains in any form and retain no copies of such PHI. If return or destruction of PHI is not feasible, HealthierHere agrees to continue to extend the protections of this Agreement to such information, and limit further use of Participant's PHI to those purposes that make the return or destruction of such PHI infeasible. The Parties acknowledge and agree that it would be infeasible for HealthierHere to return or destroy PHI that Participant has disclosed to HealthierHere for purposes of the CIE under Participation Agreement.

7.3. Survival. The obligations of HealthierHere under this Section 7 shall survive the termination of this Agreement.

## 8.0 Compliance with 42 CFR Part 2 Requirements.

In the event that HealthierHere is also considered to be a Qualified Service Organization under the federal regulations governing the Confidentiality of Substance Use Disorder Patient Records found at 42 C.F.R. Part 2 (“Part 2”), with access to Client Information that Participant has identified to HealthierHere in writing as protected by Part 2 and for which HealthierHere has agreed in writing to receive, HealthierHere agrees to the following:

8.1. In receiving, storing, processing, or otherwise dealing with any Client Information protected by Part 2 from Participant, HealthierHere is fully bound by the provisions of Part 2; and

8.2. If necessary, HealthierHere will resist in judicial proceedings any efforts to obtain access to such Client Information covered by Part 2 unless such access is expressly permitted under Part 2.

## 9.0 Definitions.

9.1. Definition of Capitalized Terms. Unless otherwise defined in this Agreement, capitalized terms shall have the meaning set forth in the Privacy Laws and the Agreement.

9.2. Rules of Interpretation. If, and to the extent there is a conflict between the definition given a term by this Agreement and the Participation Agreement or other attachment, the definition stated in this Agreement shall govern.

“Client Information” means personally identifiable information relating to a Client that Participant has provided to, or accessed from, the CIE, including without limitation, Protected Health Information, and may include identifying information such as name, address and contact information, demographic information, community services needs, health conditions, and other information relevant to the provision of services.

“Community Information Exchange” means a collaborative network of organizations, including but not limited to social services, hospitals, physical and behavioral health centers and providers, serving a community that shares Client Information to improve care coordination and better connect communities to care. CIE technology is used as a tool to support the exchange of information for a CIE.

“Public Health Activities” means public health activities and purposes as defined in HIPAA (45 CFR 164.512(b)).

“Privacy Laws” means and refers to the laws applicable to the Parties’ use and disclosure of Client Information, which may include HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and Subparts A, C, D and E of Part 164,, the Health Information Technology for Economic and Clinical Health Act of 2009 Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (February 17, 2009), and the Washington State Uniform Health Care information Act, RCW 70.02 et seq.

“Research” means scholarly analytic and evaluation activities conducted by an organization that may not be HealthierHere or one of the Participants, with the intent of making results available to the

community at large to increase the stock of knowledge and allow other organizations to learn from the CIE efforts and improve their own initiatives.

“Subcontractor” means a contractor to HealthierHere or the Participant that performs services related to the function of, or participation in, the CIE.

## 10.0 Miscellaneous Provisions.

10.1. Contradictory Terms; Construction of Terms. Any capitalized term or provision of the Participation Agreement that contradicts one or more terms and conditions of this Agreement, including the definition of a Capitalized Term, shall be superseded by the definitions and term and conditions set forth in this Agreement.

10.2. Modification. This Agreement shall be amended from time to time as is necessary in order for a Party to comply with the requirements of the Privacy Laws and/or CIE Policy and Procedures. All amendments must be in writing and executed by both Parties to be effective.

10.3. Interpretation. This Agreement represents the Parties’ entire understanding and supersedes any and all prior agreements between the Parties whether written or oral, as they may pertain to the subject matter of this Agreement. Any ambiguity in this Agreement shall be interpreted to permit or require compliance with the Privacy Laws and published CIE Privacy Policy. The terms and conditions stated in this Agreement shall control over any conflicting or varying terms and conditions in the Participation Agreement.

10.4. Survival. Those obligations of a Party which by their meaning are intended to survive termination, including, but not limited to the obligations to protect the privacy and security of Client Information from unlawful disclosure or disclosure in violation of the published CIE Privacy Policy, shall continue in effect.

10.5. Notices. Any notice required of any Party shall be in writing and shall be sent by first class U.S. Mail or overnight carrier, return receipt requested, and delivered to the address provided by such Party below, or to such change of address as a Party may specify by Notice.

10.6. Severability. The provisions of this Agreement shall be severable, and the invalidity or unenforceability of any provision (or part thereof) of this Agreement shall in no way affect the validity or enforceability of any other provision (or remaining part thereof) provision contained in this Agreement is determined to by a court of competent jurisdiction to be invalid, illegal, or incapable of being enforced, the provision shall be interpreted in a manner so as to enforce it to the fullest extent permitted by law.

10.7. Debarment, Suspension. Participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal or state regulation.

10.8. Attorneys Fees. Each party shall bear its own costs in connection with any legal action or proceeding brought to enforce, enjoin, or interpret this Agreement or the rights and obligations of a Party hereto.

10.9. Jurisdiction/Venue. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Washington. The parties waive any objections and agree to the venue and personal jurisdiction of the courts of the State of Washington and the federal courts situated in King County over any action arising out of or relating to this Agreement.

10.10. Authorized Agent Signature. By signing this Agreement, the undersigned represents and warrants that he or she has received and read a copy of this Agreement, inclusive of attachments and exhibits, and that he or she is either (a) the Participant or, (b) if the Participant is an organization, an individual acting on the Participant's behalf who is authorized to sign and enter into this Agreement.

10.11. Counterpart Signatures and Facsimile Signatures. This Agreement may be executed and delivered in counterparts, all of which taken together shall constitute one single agreement between the parties. A facsimile transmission of the executed signature page of this Agreement shall constitute due and proper execution and delivery of this Agreement.

## Signatures:

For HealthierHere

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Signature

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Date

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Printed Name and Title

For \_\_\_\_\_ (Participant)

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Signature

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Date

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Printed Name and Title