

ASN DATA USE AGREEMENT

This Data Use Agreement (“Agreement”) is effective as of the date signed by both parties (“Effective Date”) between (“Covered Entity”) and Analytic Solutions Network, LLC (“ASN”) and shall continue until terminated in accordance with Section 10 below.

WHEREAS, Covered Entity desires to participate in one or more data collection and aggregated reporting programs administered by ASN (“ASN Program”) under which Covered Entity may provide to, or permit access by, ASN, to identifiable health information, protected health information and electronic protected health information, as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and the regulations issued under such laws (collectively, “PHI”); and

WHEREAS, Covered Entity and ASN may have entered into one or more additional agreement(s) under which ASN is providing services to Covered Entity, or addressing other requirements such as the obligation to enter into a Business Associate Agreement (“Associated Agreement(s”).

NOW THEREFORE the parties agree as follows:

1. Data access and use generally. During the Term, Covered Entity agrees to disclose to ASN and for ASN to use and disclose PHI only as permitted herein. These uses and disclosures are for purposes of ASN providing services to Covered Entity to improve the quality of reporting and aggregated reporting, and may include conducting data analyses, quality assessment, and assisting with accreditation or verification that relate to Covered Entity’s health care operations. Covered Entity also may from time to time disclose or provide to ASN information that excludes certain PHI in the form of a limited data set as described 45 CFR 164.514(e)(2) (“Limited Data Set”), or de-identified data that contains no PHI where such de-identification conforms to the requirements of HIPAA (e.g. 45 CFR 164.514(b) (“De-Identified Information”). Covered Entity shall disclose to ASN whether it is providing a Limited Data Set or De-Identified Information and represents to ASN that it has complied with HIPAA in respect of such provided data sets.
2. Definitions. Terms used but not otherwise defined in this Agreement will have the meaning ascribed to them under HIPAA. To the extent ASN receives, processes or uses PHI, the parties agree that ASN is a Business Associate in respect of such PHI and Covered Entity is a Covered Entity in relation to such PHI under HIPAA.
3. Permitted uses and disclosures. Except as otherwise specified in this Agreement, ASN may use or disclose PHI on behalf of, or in order to provide services to, Covered Entity to the extent such use or disclosure is necessary to facilitate Covered Entity’s participation in the ASN Program, provided that such use or disclosure of PHI does not violate HIPAA if done by Covered Entity. Without limiting the generality of the foregoing, Covered Entity further agrees that ASN may use and disclose the data received from or on behalf of Covered Entity for the following purposes:
 - 3.1. To aggregate, analyze, produce and publish data on clinical patterns of diagnosis, treatment and outcomes of patients to provide services to the Covered Entity;
 - 3.2. To use and disclose PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B);
 - 3.3. To create De-Identified Information in conformity with HIPAA;
 - 3.4. To create Limited Data Sets from PHI and use and disclose such Limited Data Sets to third parties for research, public health, or health care operations purposes to the extent permitted by HIPAA and subject to Section 5;
 - 3.5. With the authorization of the Covered Entity, shall be entitled to submit Covered Entity data to (a) American College of Surgeons (ACS) databases (currently NTDB and TQIP); and (b) other compliance databases, such as state or regional compliance databases;
 - 3.6. To use data for internal research purposes to develop risk-adjusted and other analytic models (that contain no PHI) to help advance science and best practices in the trauma registry industry; and
 - 3.7. To use Limited Data Sets or De-Identified Information to establish a risk adjusted benchmarking database that meets the requirements of ACS CD 15-5 or other such risk adjusted benchmarking database standards, policies or revisions established by ACS.

4. Business Associate Agreement. ASN and Covered Entity shall have or will enter into a Business Associate Agreement which shall apply to all PHI in the possession of, or that is processed by, ASN.
5. Restrictions on use and disclosure of Limited Data Sets.
 - 5.1. In accordance with 45 CFR 164.514(e)(4)(ii)(C), ASN agrees (1) not to use or further disclose the information in the Limited Data Set other than as permitted by this Agreement or as otherwise required by law; (2) use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement; (3) report to the covered entity any use or disclosure of the Limited Data Set not provided for herein of which ASN becomes aware; (4) ensure that any agents to whom it provides the Limited Data Set agree to the same restrictions and conditions that apply to ASN with respect to such information; and (5) not identify or contact the individuals represented in the Limited Data Set.
 - 5.2. If a Limited Data Set is used for research purposes ASN will disclose the Limited Data Set only to participants in the same ASN Program and other researchers for research in the area of health care in accordance with the provisions of 45 CFR 164.512(i).
 - 5.3. ASN will not use or further disclose a Limited Data Set in a manner that would violate HIPAA if done by Covered Entity.
 - 5.4. ASN will not use or disclose the Limited Data Set other than as permitted by this Agreement or as otherwise required by law.
 - 5.5. ASN will use reasonable and appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Limited Data Set that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 CFR 164.314.
6. Obligations of Covered Entity. Covered Entity represents, warrants and covenants that:
 - 6.1. It has developed and makes available to all patients a Notice of Privacy Practices that complies with 45 CFR 164.520 and any other applicable provisions of HIPAA. Covered Entity will provide ASN with a copy of its Notice of Privacy Practices upon request.
 - 6.2. It shall notify ASN of any limitation(s) in Covered Entity's Notice of Privacy Practices, to the extent that such limitation may affect ASN's use or disclosure of PHI or rights to create Limited Data Sets or exercise its rights in Section 3.
 - 6.3. To Covered Entity's knowledge, as of the Effective Date, all disclosures of PHI made to ASN are permissible disclosures under HIPAA, and no individual has restricted disclosures so as to make the disclosure to ASN impermissible.
 - 6.4. Covered Entity will promptly notify ASN of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with HIPAA, if such restriction affects ASN's use or disclosure of PHI or exercise its rights in Section 3.
 - 6.5. Covered Entity will not ask ASN to use or disclose PHI in any manner that would not be permissible under HIPAA if undertaken by Covered Entity.
7. Insurance. ASN agrees to maintain commercial general liability, errors and omission and cyber-liability/data breach insurance in amounts determined by ASN to reasonably cover insurable claims that may arise hereunder, but in no event less than \$1,000,000 per claim/\$2,000,000 aggregate.
8. Indemnification. To the extent permitted by applicable law, each party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other party (the "Indemnified Party"), its directors, officers, employees and agents from and against any and all liabilities, claims, damages, loss and costs (including reasonable attorney's fees) to the extent arising from a third party claim arising from (A) the negligent acts or omissions or willful misconduct of the Indemnifying Party related to this Agreement; (B) a material breach of this Agreement; (C) infringement of intellectual property or proprietary rights of a third party or (D) violation of applicable law, including HIPAA. For the purpose of this provision, the acts and omissions of any subcontractor or agent of the Indemnifying

Party (or than the other party or the other party's other contractors or agents) shall be deemed to be the act or omission of the Indemnifying Party. The Indemnified Party shall give prompt written notice to the Indemnifying Party of any claim for which it seeks indemnification, and the Indemnified Party shall reasonably cooperate with the Indemnifying Party, at the cost and expense of the Indemnifying Party, in defending such claim. Notwithstanding the above, neither party shall be liable to indemnify, defend or hold the other party harmless to the extent the other party suffered damages as a result of such other party's own negligent or intentional act or omission, breach of this agreement, infringement of intellectual property rights, or violation of applicable law.

9. Limitation of liability and remedy. Except for (a) a claim for which a party owes a duty of indemnification under Section 8; (b) a violation of HIPAA or the confidentiality of PHI; (c) a claim for which there is insurance coverage (but in this case the maximum liability is the greater of the amount below or the amount of applicable insurance coverage); or (d) the fraud or intentional and knowing misconduct (each of (a)-(d) are the "Excluded Claims"); (1) neither party shall be liable to the other for lost profits, indirect, incidental, special, punitive or consequential damages; and (2) the maximum liability of either party to the other will be the greater of \$10,000 or the fees paid (or payable) to ASN in the 12 months preceding the date the claim arose. There shall be no limitations of remedy or liability in connection with Excluded Claims.

10. Term and Termination. This Agreement shall become effective on the Effective Date and shall remain in effect until termination of all of the Associated Agreements, if applicable, or until termination as set forth in this Agreement.

10.1. *Termination.* This Agreement may be terminated as follows:

- (a) By written agreement of both parties;
- (b) By either party upon written notice if the other party ("Breaching Party") is in material breach of this Agreement and the Breaching Party fails to cure the material breach within thirty (30) days after receiving written notice of the material breach; or
- (c) If there is no Associated Agreement, by thirty (30) days written notice from either party to the other.

10.2. *Effect of Termination.* Except as provided below, upon termination of this Agreement for any reason, ASN will, at Covered Entity's direction, return or destroy all PHI received from Covered Entity, or created or received by ASN on behalf of Covered Entity, and ASN will retain no copies of the PHI; provided however that all De-Identified Information and Limited Data Set data shall not be returned, but rather, subject to compliance with applicable law (including HIPAA) and data contained in a Limited Data Set (and/or De-Identified Information) shall not be subject to the obligations of this section provided that the data use provisions pertaining to such Limited Data Set that are set forth herein will survive any termination or expiration of the Agreement. In the event that ASN reasonably determines that returning or destroying the PHI is infeasible due to inclusion of the PHI in ASN's database or otherwise as permitted under HIPAA, ASN will give Covered Entity a statement of reasons why the return or destruction of the PHI is infeasible and the protections of this Agreement shall continue to apply to such PHI and limit further its use and disclosure to those purposes that make the return or destruction infeasible, for so long as ASN maintains such PHI. The obligations of this section will survive any termination or expiration of this Agreement. Upon termination of this Agreement, the parties agree that Covered Entity will refrain from knowingly submitting PHI to ASN, and ASN will refrain from knowingly accepting PHI from Covered Entity.

11. Miscellaneous.

11.1. *Amendment.* Any amendment to this Agreement must be in writing and signed by each of the parties. The parties agree to amend this Agreement from time to time as necessary for the parties to comply with the requirements of federal and applicable state law and regulations. Either party may request that the other party amend this Agreement in order to comply with applicable state and federal law and regulations. If after a reasonable period of good faith negotiation, an amendment of this Agreement is not achieved to the satisfaction of both parties, then either party may terminate this Agreement and the Associated Agreement(s), if applicable, without penalty. In the event the parties engage in negotiations undertaken in accordance with this Section, the parties may suspend during such period of negotiation any provision of this Agreement requiring or obligating either party to use or disclose PHI in a manner that either party reasonably believes would violate any applicable state or federal law or regulation, including without limitation HIPAA.

11.2. *Interpretation.* Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity and ASN to comply with HIPAA, HITECH, and applicable state and federal laws and regulations.

- 11.3. *Relationship to the Associated Agreement(s).* If the parties have entered into an Associated Agreement(s), it is the intent of the parties that the terms of the Associated Agreement(s) be interpreted so as to cause the Associated Agreement(s) to comply with HIPAA. Accordingly, this Agreement shall amend the Associated Agreement(s) to the extent provided herein regardless of whether this Agreement formally satisfies the requirements of the Associated Agreement(s) for amendment of the Associated Agreement(s). To the extent any provisions of this Agreement conflict with the terms of the Associated Agreement(s), this Agreement shall govern.
- 11.4. *Assignment.* Except as otherwise provided herein, neither party may without the written consent of the other assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement.
- 11.5. *Severability.* If any part of this Agreement is determined to be invalid, illegal or unenforceable by any Act of Congress, state legislature, or by any regulation issued by the United States or a State, or declared null and void by any court with valid jurisdiction, then the parties will modify such part, if possible, to conform to the law, and the remaining parts will be fully effective and operative insofar as reasonably possible.
- 11.6. *Entire Agreement.* This Agreement constitutes the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings between the parties, whether oral or in writing, concerning its subject matter.
- 11.7. *Jurisdiction.* This Agreement is governed by the laws of the State of Maryland and venue for resolution of any disputes shall reside in the Federal or State courts in Harford County, Maryland.
- 11.8. *Third Party Beneficiaries.* ASN and Covered Entity agree that Individuals whose PHI is used or disclosed to ASN or its Subcontractors under this Agreement are not third-party beneficiaries of this agreement.
- 11.9. *Waiver.* No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- 11.10. *Relationship of the Parties.* The parties are independent contractors of each other. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, or other similar relationship between the parties. Neither party shall have the right to exercise control or direction over the business of the other party.
- 11.11. *Authority.* The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the party he or she represents, and that this Agreement will be binding on such party, and its officers, directors, agents, and employees.
- 11.12. *Notices.* Any notices required pursuant to this Agreement shall be in writing and sent by US Mail, personal delivery, next-day express mail, or by facsimile addressed as identified below:

To: ASN: 302 Dove Court, Suite 2B, Forest Hill, MD 21050, c/o Chief Information Officer

To: Covered Entity: _____

So Agreed:

Analytic Solutions Network, LLC

Covered Entity: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

302 Dove Court, Suite 2B
Forest Hill, MD 21050