

**CONFIDENTIALITY/BUSINESS ASSOCIATE AGREEMENT
BY AND BETWEEN
HAMBLEN COUNTY GOVERNMENT ("PLAN")
AND
SAV-RX PRESCRIPTION SERVICE**

This Agreement ("**Agreement**"), effective as of April 17, 2023 ("**Effective Date**"), by and between Sav-Rx Prescription Service, for itself and on behalf of its subsidiaries and affiliates ("**Business Associate**") and Hamblen County Government ("**Plan**" or "**Covered Entity**"),¹ is entered into to affirm their commitment to protect the confidentiality of protected health information ("**PHI**") that is generated and/or shared by them, to protect the security of electronic protected health information ("**E-PHI**") that is created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, and to comply with the standards for electronic transactions, all to the extent required by the Health Insurance Portability and Accountability Act of 1996 and the implementing administrative, privacy and security regulations and related government guidance ("**HIPAA**"), and the Health Information Technology for Economic and Clinical Health Act and related government guidance to the extent applicable to business associates ("**HITECH**"). This Agreement is intended to supplement the terms of all agreements for services existing between the Parties and supersede any prior business associate agreement and understandings or contractual provisions inconsistent with the requirements under HIPAA.

WHEREAS, Business Associate and Covered Entity will enter into a services agreement pursuant to which Business Associate, on an independent contractor basis, will act as the Prescription Benefit Manager for Covered Entity and provide related services for its prescription drug benefit ("**PBM Agreement**"), and Business Associate may create on behalf of, or receive from Covered Entity or its service providers, individually identifiable health information that qualifies as PHI under HIPAA, and maintain or transmit individually identifiable health information that qualifies as E-PHI on their behalf; and

WHEREAS, Business Associate is a "business associate" of Covered Entity within the meaning of HIPAA, and Covered Entity is required to obtain satisfactory assurances, through a written agreement, that Business Associate will appropriately safeguard the confidentiality of PHI received from or created on its behalf and the security of E-PHI created, received, maintained or transmitted on its behalf, and comply with the electronic transaction standards, all to the extent required by HIPAA and HITECH;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, Covered Entity and Business Associate hereby agree as follows:

1. **Definitions.** The following terms, when used in this Agreement as capitalized terms, shall have the following meaning unless a different meaning is clearly and plainly implied by the context. All other terms that are used but not defined in this Agreement shall have the meaning specified

¹ Business Associate and Covered Entity are also collectively referred to as the "Parties."

under the HIPAA Rules, including its statute, regulations and other official government guidance, or if none is specified, shall be interpreted in a manner consistent therewith.

- (a) **"Breach"** means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises its security or privacy, as defined in 45 CFR § 164.402.
- (b) **"Breach Notification Rule"** means the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information, as set forth in 45 CFR Parts 160 and 164, subparts A and D.
- (c) **"Electronic Health Record"** means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff as defined in the American Recovery and Reinvestment Act of 2009 § 13400(5).
- (d) **"Electronic Protected Health Information" or "E-PHI"** means individually identifiable health information that is Protected Health Information and transmitted by or maintained in electronic media, as defined in 45 CFR § 160.103, except that it shall be limited to E-PHI that Business Associate (or its agents and Subcontractors) creates, receives, maintains or transmits on behalf of Covered Entity.
- (e) **"Electronic Transactions Rule"** means the final regulations issued by HHS concerning standard transactions and code sets, as set forth in 45 CFR Parts 160 and 162.
- (f) **"Enforcement Rule"** means the Enforcement Provisions as set forth in 45 CFR Part 160.
- (g) **"HHS"** means the United States Department of Health and Human Services.
- (h) **"HIPAA Rules"** means the Privacy Rule, Security Rule, Breach Notification Rule and Enforcement Rule at 45 CFR Part 160 and Part 164.
- (i) **"Privacy Rule"** means the Privacy Standards and Implementation Specifications, as set forth in 45 CFR Parts 160 and 164, subparts A and E.
- (j) **"Protected Health Information" or "PHI"** means individually identifiable health information that qualifies as Protected Health Information as defined at 45 CFR § 160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- (k) **"Required By Law"** means a legally enforceable mandate compelling the use or disclosure of PHI as set forth in 45 CFR § 164.103.
- (l) **"Security Incident"** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of Covered Entity's E-PHI or interference with

Business Associate's system operations in Business Associate's Information Systems, as defined at 45 CFR § 164.304.

(m) **"Security Rule"** means the Security Standards and Implementation Specifications, as set forth in 45 CFR Parts 160 and 164, subparts A and C.

(n) **"Subcontractor"** means a person to whom the Business Associate delegates a function, activity or service, other than in the capacity of a member of its workforce, as set forth in 45 CFR § 160.103.

(o) **"Transaction"** means the transmission of information between two parties to carry out financial or administrative activities related to health care, as set forth at 45 CFR § 160.103.

(p) **"Unsecured Protected Health Information"** or **"Unsecured PHI"** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through technology or a methodology specified by HHS, as set forth at 45 CFR § 164.402.

2. Privacy and Security of Protected Health Information.

(a) **Permitted Uses and Disclosures.** Business Associate is permitted to use and disclose Protected Health Information only as set forth below:

(i) **Functions and Activities on Plan's Behalf.** To perform the functions, activities and services for the Plan as specified or contemplated by the PBM Agreement, consistent with the HIPAA Rules. The Parties may enter into other agreements that include additional functions, activities and services to be provided by Business Associate on Plan's behalf, and this Agreement will also apply to such agreements to the extent they include or involve the use or disclosure of PHI;

(ii) **Business Associate's Operations.** For Business Associate's proper management and administration, or to carry out Business Associate's legal responsibilities provided that any disclosure of PHI (A) is Required by Law, or (B) Business Associate obtains reasonable assurance from the person or entity to which it is disclosed that the PHI will be held in confidence and used or further disclosed only for the purpose for which Business Associate disclosed it or as Required by Law and that such person or entity will promptly notify Business Associate (who will notify Plan in accordance with the breach notification provisions) of any instance in which the confidentiality of PHI was Breached;

(iii) **Data Aggregation Services.** Business Associate may use PHI to provide data aggregation services relating to the health care operations of Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B), except as limited by this Agreement;

(iv) **Minimum Necessary.** Business Associate will make reasonable efforts to use, disclose and request only the minimum amount of PHI reasonably necessary to accomplish the intended purpose, and to comply with Covered Entity's related policies and procedures to the extent communicated in writing to Business

Associate. However, Business Associate is not obligated to comply with the minimum necessary limitation if neither Business Associate nor Covered Entity is required to do so under the HIPAA Rules.

Covered Entity will obtain any consent or authorization required by the Privacy Rule for PHI that it furnishes to Business Associate. Covered Entity will enter into a business agreement, to the extent required by the HIPAA Rules, with any third party that it authorizes to contact Business Associate on its behalf;

(b) Prohibition on Unauthorized Use or Disclosure. Business Associate will not use or disclose PHI, except as permitted or required by this Agreement or in writing by Plan or as Required by Law. This Agreement does not authorize Business Associate to use or disclose Covered Entity's PHI in a manner that would violate the HIPAA Rules if done by Covered Entity, except as permitted for Business Associate's proper management and administration as described above.

(c) Information Safeguards.

(i) Privacy of Plan's PHI. Business Associate will develop, implement, maintain and use appropriate administrative, technical and physical safeguards to protect the privacy of PHI. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement. To the extent the parties agree that the Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

(ii) Security of Plan's E-PHI. Business Associate will comply with the Security Rule and will use appropriate administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of E-PHI that Business Associate creates, receives, maintains or transmits on Covered Entity's behalf, to prevent the use or disclosure of PHI other than as provided for by this Agreement.

(iii) No Transfer of PHI Outside United States. Business Associate will not transfer PHI outside the United States without the prior written consent of Covered Entity. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents or Subcontractors physically located outside the United States are able to access, use or disclose PHI.

(d) Subcontractors and Agents. Business Associate will require its Subcontractors and agents, by written agreement with Business Associate, to comply with the Security Rule, to appropriately safeguard PHI created, received, maintained or transmitted on Business Associate's behalf, and to apply the same privacy and security obligations, restrictions and conditions that apply to Business Associate with respect to such PHI.

(e) **Prohibition on Sale of PHI.** Business Associate will not engage in any sale (as defined in the HIPAA Rules) of PHI.

(f) **Penalties For Noncompliance.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided by the HIPAA Rules.

3. **Compliance with Electronic Transactions Rule.** If Business Associate conducts, in whole or part, electronic Transactions on Covered Entity's behalf for which HHS has established standards, Business Associate will comply and require any Subcontractor it involves therewith to comply, with the Electronic Transactions Rule and any related operating rules adopted by HHS to the extent applicable.

4. **Individual Rights.**

(a) **Access.** Business Associate will, within 20 calendar days after Covered Entity's request, make available to Covered Entity or its designee for inspection and copying, PHI about the individual that is in a designated record set in Business Associate's custody or control, so that Covered Entity may comply with its access obligations under 45 CFR § 164.524. If requested, Business Associate will provide an electronic copy if it is readily producible in the format requested. If it is not, Business Associate will cooperate with Covered Entity to enable Covered Entity to meet its electronic access obligation under 45 CFR § 164.524. Business Associate will forward to Covered Entity an individual's request for inspection or copying of PHI that Business Associate receives, without unreasonable delay and within 48 hours after receipt.

(b) **Amendment.** Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of an individual's PHI that is in a designated record set in its custody or control to allow Covered Entity to meet its amendment obligations under 45 CFR § 164.526.

(c) **Disclosure Accounting.** To allow Covered Entity to meet its obligation to account for disclosures of PHI under 45 CFR § 164.528:

(i) **Disclosures Subject to Accounting.** Business Associate will record the information specified below ("**Disclosure Information**") for each disclosure of PHI that Business Associate makes to Covered Entity or to a third party, for which Covered Entity must account under the HIPAA Rules.

(ii) **Disclosure Information.** The Disclosure Information that must be recorded by Business Associate includes (A) the disclosure date, (B) the name and (if known) address of the person or entity to which the disclosure is made, and (C) a brief description of the PHI disclosed and purpose of the disclosure. For repetitive disclosures of PHI for a single purpose to the same person or entity, Business Associate may instead record the Disclosure Information specified above for the first of the repetitive accountable disclosure and then the frequency, periodicity or number of such disclosures and the date of the last such disclosure.

(iii) Availability of Disclosure Information. Business Associate will maintain the Disclosure Information for at least six (6) years after the date of the accountable disclosure to which it relates. Business Associate will make the Disclosure Information available to Covered Entity or its designee within 48 hours of a request.

(d) Restriction Agreements and Confidential Communications. Covered Entity will notify Business Associate of any limitation in its notice of privacy practices that affects Business Associate's use or disclosure of PHI. Business Associate will comply with any reasonable request from Covered Entity to (i) restrict use or disclosure of PHI pursuant to 45 CFR § 164.522(a), or (ii) provide for confidential communication of PHI pursuant to 45 CFR § 164.522(b), provided that Covered Entity gives written notice to Business Associate of the restriction or confidential communication that Business Associate must follow. Covered Entity will give prompt written notice to Business Associate of the termination of any such restriction or confidential communication requirement.

5. **Breaches and Security Incidents.**

(a) Reporting.

(i) Impermissible Use or Disclosure. Business Associate will report to Covered Entity any use or disclosure of PHI not permitted by this Agreement within 48 hours after discovery thereof.

(ii) Breach of Unsecured PHI. Business Associate will report to Covered Entity's Privacy Officer any potential Breach of Unsecured PHI within 48 hours after discovery thereof in accordance with 45 CFR § 164.410, subject to delay as provided by 45 CFR § 164.412. Business Associate's report will include at least the following information, provided that the absence of any information will not be cause for Business Associate to delay the report: (A) a description of what happened, the date it happened and the date of discovery; (B) the types of PHI involved; (C) who made the non-permitted use or disclosure and who received it; (D) what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, mitigate harmful effects and protect against any further Breaches; (E) what steps the individuals who were subject to the Breach should take to protect themselves from potential harm; and (F) such other information reasonably requested by Covered Entity including a written report and risk assessment under 45 CFR § 164.402.

(iii) Security Incidents. Business Associate will report to Covered Entity any Security Incident of which it becomes aware, in such format and detail and with such frequency as is reasonable and appropriate based upon the relevant facts, circumstances and industry practices consistent with the HIPAA Rules.

(b) Mitigation. Business Associate, to the extent practicable, will mitigate and assist Covered Entity in its efforts to mitigate any harmful effects of which Business Associate is aware, resulting from a use or disclosure of PHI in violation of this Agreement.

(c) **Breach Notification to Third Parties.** In the event of a Breach of Unsecured Protected Health Information by Business Associate, Business Associate assumes all responsibility under 45 CFR Section 164, Subpart D, for timely providing Breach notifications to the extent required under the Breach Notification Rule, including as applicable notification to individuals, the HHS Office for Civil Rights, and the media, with Covered Entity's right to review and comment on the content of any such notices before issuance. Covered Entity will provide Business Associate with the addresses and any information necessary for Business Associate to provide the notices. Business Associate will be responsible for the cost of preparing and issuing all required notifications and of all appropriate and necessary remediation and mitigation, for Breaches of Unsecured PHI by Business Associate, its employees, Subcontractors or agents, unless and except to the extent caused by Covered Entity.

6. **Term and Termination.**

(a) **Term.** This Agreement shall be effective as of the Effective Date and remain in effect until termination of the PBM Agreement or, if earlier, termination of this Agreement as set forth below, subject to survival of the provisions described herein.

(b) **Termination For Statutory or Regulatory Changes Affecting PHI.** If Covered Entity gives written notice to Business Associate that its responsibilities under the Agreement should be altered as a result of a change in the HIPAA Rules ("Additional Responsibilities"), or if Business Associate on its own initiative or through its own efforts becomes aware of such Additional Responsibilities, the Parties will take necessary action to amend this Agreement and make any changes Required By Law. If Business Associate reasonably determines that its Additional Responsibilities will have a material adverse financial effect on its interest in this Agreement and the PBM Agreement, and the Parties cannot agree on fees and implementation schedules for the Additional Responsibilities, either party may terminate this Agreement and the PBM Agreement upon thirty (30) days prior written notice to the other party.

(c) **Right to Terminate for Cause.** If either Covered Entity or Business Associate determines that the other party is in material breach of this Agreement, it will provide written notice of such breach to the other party with at least 30 days to cure the breach or end the violation. If the party which has been notified of the material breach fails to take reasonable steps to effect a cure within the initial 30-day period, the reporting party may terminate this Agreement and the PBM Agreement. If the material breach cannot be cured, the reporting party may immediately terminate this Agreement and the PBM Agreement upon written notice to the other party. If Covered Entity or Business Associate is in material breach of its obligations under this Agreement and neither cure or termination is feasible, the other Party will report the violation to HHS if and as required by law.

(d) **Treatment of PHI on Termination.**

(i) **Return or Destruction of Covered Entity's PHI is Feasible.** Upon termination of this Agreement for any reason and except as provided below in (ii), Business Associate will immediately return, or if directed by Covered Entity destroy,

all PHI received from Covered Entity or created or received by Business Associate on Covered Entity's behalf. This provision shall apply to all PHI in the possession of Business Associate's subcontractors or agents. Business Associate shall retain no copies of the PHI.

(ii) **Procedure When Return or Destruction Is Not Feasible.** If Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate will identify such PHI, including PHI in the possession of its subcontractors or agents, and explain why return or destruction is infeasible. Upon submission of adequate written proof, satisfactory to Covered Entity, that return or destruction of the PHI is infeasible, Business Associate shall extend the protections of this Agreement beyond its termination or conclusion to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate or its subcontractors or agents maintains such PHI.

7. **General Provisions.**

(a) **Notices.** All notices and communications required by this Agreement shall be in writing and given in one of the following forms using, as applicable, the address for each Party specified in this Agreement or as changed by prior written notice to the other Party: (i) by delivery in person; (ii) by a nationally-recognized, next-day courier service; or (iii) by first-class, registered or certified mail, postage prepaid.

(b) **Survival.** In addition to any survival rights that are provided elsewhere in this Agreement, the rights and obligations of Business Associate and Covered Entity pursuant to Sections 4, 5, 7(a), 7(d) and 7(e) shall survive termination of this Agreement.

(c) **Amendment to Agreement.** This Agreement may be amended only in writing signed by the Parties hereto.

(d) **Inspection of Internal Practices, Books and Records.** Business Associate will make its internal practices, books and records relating to its use and disclosure of PHI available to HHS in a time and manner reasonably requested or as otherwise designated by HHS, to determine compliance with the HIPAA Rules, subject to attorney-client and other applicable legal privileges.

(e) **No Third Party Beneficiaries.** Nothing express or implied in this Agreement shall be construed as creating any rights or benefits to any third parties.

(f) **Construction and Interpretation.** Any ambiguity in this Agreement shall be resolved in a manner that permits Covered Entity and Business Associate to comply with the applicable requirements under the HIPAA Rules. The Section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement, which shall remain in full force and effect.

(g) Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(h) Informal Resolution. If any controversy, dispute or claim arises between the parties with respect to this Agreement, they shall make good faith efforts to resolve such matters informally.

(i) Regulatory References. Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended or replaced.

INTENDING TO BE LEGALLY BOUND, the Parties have duly executed this Agreement.

Covered Entity:
Hamblen County Government

Business Associate:
Sav-Rx Prescription Service

Signed: _____

Signed:  _____

Print Name: _____

Print Name: Christy Piti

Title: _____

Title: CEO

Date: _____

Date: April 17, 2023

Address: _____

Address: 224 N. Park Ave
Fremont, NE 68025
