

MARYLAND PRIMARY CARE PROGRAM

CARE TRANSFORMATION ARRANGEMENT

This Care Transformation Arrangement (“Arrangement”) is between Atlantic General Hospital Corporation, a care transformation organization (the “CTO”), and [name of Practice], (the “Practice”) (each a “Party,” and collectively the “Parties”).

The CTO has been selected by the Centers for Medicare and Medicaid Services (“CMS”), Center for Medicare and Medicaid Innovation (“CMMI”), to serve as a care transformation organization in the Maryland Primary Care Program (“MDPCP”). The Practice is a primary care practice that provides health care services to Medicare beneficiaries, among others, in the State of Maryland.

This Arrangement sets forth the terms and conditions under which the CTO will provide to the Practice certain care transformation services and resources consistent with MDPCP requirements.

1. Participation Agreements. Prior to the Effective Date of this Arrangement, the CTO must sign an MDPCP Participation Agreement with CMMI (the “CTO Participation Agreement”). Prior to the Effective Date of this Arrangement, the Practice must sign an MDPCP Participation Agreement with CMMI (the “Practice Participation Agreement”). If either Party does not sign a Participation Agreement with CMMI prior to the Effective Date of this Arrangement, then this Arrangement shall be deemed null ab initio.
2. Effective Date. The Effective Date of this Arrangement is the later of January 1, 2019, or January 1 of the year following the date this Arrangement is signed by the last Party to sign it (as indicated by the date associated with that Party’s signature). A Party’s performance obligations under this Arrangement shall not begin prior to the Effective Date.
3. Term of Arrangement. This Arrangement is effective for a minimum of one full Performance Year, which consists of a 12-month period beginning on January 1 of each year, and will renew automatically on January 1 of each year, until terminated by either party in accordance with Section 12 of this Arrangement. This Arrangement is subject to early termination by either Party only if: (1) CMS terminates either the CTO Participation Agreement or the Practice Participation Agreement, or (2) if CMS authorizes, in writing, such early termination of this Arrangement.
4. Offer and Selection of CTO Services. The Practice is responsible for meeting the Care Transformation Requirements as listed in Appendix A. The CTO will support the Practice in meeting those requirements including any support specified in the either the CTO or Practice Participation Agreements. The CTO has offered to provide any and all of the CTO Services to the Practice, as listed in the package selected in Appendix B. The CTO offers these same CTO Services to all participating practices within the same service option level and Track.
5. Care Management Fees. CMS will calculate the Practice’s Care Management Fees (“CMF”) according to the CTO Participation Agreement, the Practice Participation Agreement, and the methodologies described therein. In accordance with CTO Option Selection Form A, the CTO will receive **50/50%** of the practice’s CMF payment amount calculated by CMS, and the remaining **70/30%** of such CMF payment amount will be paid to the Practice.
6. Lead Care Manager. For practices choosing the 50% option, the CTO will provide the Practice with one or more individuals who are fully dedicated to care management functions of the Practice (the “Lead Care Manager”), and additional services selected in accordance with Section 4. For practices choosing the 30% option, the practice will have its own care manager(s) to work in conjunction with the CTO and the CTO’s offerings in accordance with Section 4.
7. Data Sharing and Privacy. The Practice authorizes the CTO to have access to all clinical data available in the electronic medical records or shared through the State-Designated Health Information Exchange (“HIE”), including personal health information, of MDPCP Beneficiaries attributed to the Practice. The Practice authorizes the CTO to have access via CRISP to quality and utilization reports available to the Practice. The CTO will include a Business Associate Agreement (“BAA”) for the Practice to approve. The BAA will govern their data sharing, use, and confidentiality, a copy of which is in Appendix B. Each Party will comply with HIE policies and regulations, including patient education requirements, and will execute any separate agreement that may be required by CRISP.
8. Notification of Changes in Medicare Enrollment. The Practice will notify the CTO of any changes to the Practice’s Medicare beneficiary enrollment information within thirty (30) days after such changes occur.

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9. No Remuneration Provided. Neither the CTO nor the Practice has offered, given, or received remuneration in return for, or to induce business other than the business covered under this CTO Arrangement.
10. Practice of Medicine or Professional Services Not Limited by this Arrangement. The Arrangement does not limit or restrict in any way the ability of the Practice and its clinician(s) to make medical decisions that they consider in their professional judgment to be in the best interest of a MDPCP Beneficiary.
11. Compliance with All Applicable Laws. This Arrangement does not alter or amend the Parties' being bound to comply with all relevant federal and State laws, including, but not limited to, health care fraud and abuse laws, HIPAA, and the Maryland Medical Practice Act. The CTO will continue to be bound by the terms of the CTO Participation Agreement, and the Practice will continue to be bound by the terms of the Practice Participation Agreement.
12. Termination. Either Party may terminate this Arrangement annually or earlier by providing written notice of termination to the other Party, CMS and the Program Management Office. If the Practice or CTO decides to terminate this Arrangement for any reason, it must provide written notice in accordance with the notification and termination requirements stated in the applicable MDPCP Participation Agreements. This Arrangement automatically terminates on the Effective Date of the termination of either the CTO Participation Agreement or the Practice Participation Agreement.
13. Copies and Retention of Arrangement. The Practice will provide a copy of this Arrangement to the CTO and the Maryland Department of Health, Program Management Office, within thirty (30) days of execution. The CTO will retain copies of this Arrangement for a period of ten (10) years following expiration or termination of the CTO Participation Agreement. The CTO will, upon request, provide copies of this Arrangement to the federal government, including, but not limited to, CMS, the HHS Office of the Inspector General, or the Comptroller General.
14. Amendments. The Parties may amend this Arrangement including, but not limited to, the CTO Services offered and provided, at any time upon mutual written consent. The CTO must continue to offer the same CTO Services to all participating practices within the same service option level and Track, as specified in Section 4 of this Arrangement.

IN WITNESS THEREOF, and in acknowledgement of the aforementioned, the authorized representatives of the CTO and the Practice do hereby indicate their approval and consent:

FOR THE CARE TRANSFORMATION ORGANIZATION:

____ **SAMPLE Only – Do NOT Complete Now** ____
Signature

____ **SAMPLE Only – Do NOT Complete Now** ____
Printed Name

____ **SAMPLE Only – Do NOT Complete Now** ____
MDPCP CTO ID

____ **SAMPLE Only – Do NOT Complete Now** ____
Title

____ **SAMPLE Only – Do NOT Complete Now** ____
Date Signed

FOR THE PRACTICE:

____ **SAMPLE Only – Do NOT Complete Now** ____
Signature

____ **SAMPLE Only – Do NOT Complete Now** ____
Printed Name

____ **SAMPLE Only – Do NOT Complete Now** ____
MDPCP Practice ID

____ **SAMPLE Only – Do NOT Complete Now** ____
Title

____ **SAMPLE Only – Do NOT Complete Now** ____
Date Signed

Appendix A:
Care Transformation Requirements

Comprehensive Primary Care Functions of Advanced Primary Care	Care Transformation Requirement	Practice Track Requirement
Access and Continuity	1.1 Empanel attributed beneficiaries to practitioner or care team.	Track 1 + 2
	1.2 Ensure attributed beneficiaries have 24/7 access to a care team or practitioner with real-time access to the EHR.	Track 1 + 2
	1.3 Ensure attributed beneficiaries have regular access to the care team or practitioner through at least one alternative care strategy.	Track 2 only
Care Management	2.1 Ensure all empaneled, attributed beneficiaries are risk stratified.	Track 1 + 2
	2.2 Ensure all attributed beneficiaries identified as increased risk and likely to benefit receive targeted, proactive, relationship-based (longitudinal) care management.	Track 1 + 2
	2.3 Ensure attributed beneficiaries receive a follow-up interaction from your practice within one week for ED discharges and two business days for hospital discharges.	Track 1 + 2
	2.4 Ensure targeted, attributed beneficiaries who have received follow-up after ED, hospital discharge, or other triggering events receive short-term (episodic) care management.	Track 1 + 2
	2.5 Ensure attributed beneficiaries in longitudinal care management are engaged in a personalized care planning process, which includes at least their goals, needs, and self-management activities.	Track 2 only
	2.6 Ensure attributed beneficiaries in longitudinal care management have access to comprehensive medication management.	Track 2 only
Comprehensiveness and Coordination across the Continuum of Care	3.1 Ensure coordinated referral management for attributed beneficiaries seeking care from high-volume and/or high-cost specialists as well as EDs and hospitals.	Track 1 + 2
	3.2 Ensure attributed beneficiaries with behavioral health needs have access to care consistent with at least one option from a menu of options for integrated behavioral health supplied to attributed beneficiaries by the Practice	Track 1 + 2
	3.3 Facilitate access to resources that are available in your community for beneficiaries with identified health-related social needs	Track 2 only
Beneficiary & Caregiver Experience	4.1 Convene a Patient-Family/ Caregiver Advisory Council (PFAC) at least annually and integrate PFAC recommendations into care and quality improvement activities.	Track 1 + 2
	4.2 Engage attributed beneficiaries and caregivers in a collaborative process for advance care planning	Track 2 only
Planned Care for Health Outcomes	5.1 Continuously improve your performance on key outcomes, including cost of care, electronic clinical quality measures, beneficiary experience, and utilization measures.	Track 1 + 2

Appendix B:

CTO Services/Personnel Offered and Practice Selection

Package A (50%)

Service Category	Care Requirement & Quality Measure	Description	Staff Type	Ratio of staff (FTE) to practice
Behavioral Health Integration (BHI)	Comprehensiveness & Coordination 3.2, NQF 0004	Linking to services; AGH or Health Department	Care Coordination/Manager	1:2 per practice
Medication Management	Care Management 2.6	Link to services & MTM program	Care Coordination/Manager	1:2 per practice
Social Determinants Screening & Referral	Comprehensiveness & Coordination 3.3	Manage and refer to Health Department	Care Coordination/Manager	1:2 per practice
Alternative Care (e.g., Telehealth, home visits)	Access & Continuity 1.3	N/A	Care Coordination/Manager	1:2 per practice
Transitional Care Management (TCM)	Care Management 2.2, 2.3, 2.4, 2.5, 2.6	Work in conjunction with AGH case managers	Care Coordination/Manager	1:2 per practice
Care Planning & Self-Management Support	Care Management 2.5, Beneficiary & Caregiver Experience 4.2	Work in conjunction with AGH case managers	Care Coordination/Manager	1:2 per practice
Population Health Management & Analytics	Planned Care for Health Outcomes 5.1, eQMs, Utilization	Execute follow-up based upon reports/outcomes	Care Coordination/Manager	1:2 per practice
Clinical & Claims Data Analysis	Care Management 2.1-2.4, Utilization	HCC based upon claims data & reports thru CRISP	Care Coordination/Manager	1:2 per practice
Patient Family Advisory Councils (PFACs)	Beneficiary & Caregiver Experience 4.1	Future development	Care Coordination/Manager	1:2 per practice
Quality & Utilization Performance	Planned Care for Health Outcomes 5.1, eQMs	Execute follow-up based upon reports/outcomes	Care Coordination/Manager	1:2 per practice
24/7 Access	Access & Continuity 1.2	Provided by individual practice	Care Coordination/Manager	1:2 per practice
Referral Management	Comprehensiveness & Coordination 3.1	Hospital and community based care coordination	Care Coordination/Manager	1:2 per practice
Other				

Example Package D (30%)*

Service Category	Care Requirement & Quality Measure	Description	Staff Type	Ratio of staff (FTE) to practice
Behavioral Health Integration (BHI)	Comprehensiveness & Coordination 3.2, NQF 0004	Shared/limited linking to services; AGH or Health Department	Care Coordination	1:2 per practice
Medication Management	Care Management 2.6	Link to services & MTM program	Care Coordination	1:2 per practice
Social Determinants Screening & Referral	Comprehensiveness & Coordination 3.3	Practice manages and refer to Health Department	Care Coordination	1:2 per practice
Alternative Care (e.g., Telehealth, home visits)	Access & Continuity 1.3	N/A	Care Coordination	1:2 per practice
Transitional Care Management (TCM)	Care Management 2.2, 2.3, 2.4, 2.5, 2.6	Work in conjunction with AGH case managers	Care Coordination	1:2 per practice
Care Planning & Self-Management Support	Care Management 2.5, Beneficiary & Caregiver Experience 4.2	Practice manages and works with AGH case managers	Care Coordination	1:2 per practice
Population Health Management & Analytics	Planned Care for Health Outcomes 5.1, eQMs, Utilization	Execute follow-up based upon reports/outcomes	Care Coordination	1:2 per practice
Clinical & Claims Data Analysis	Care Management 2.1-2.4, Utilization	HCC based upon claims data & reports thru CRISP	Care Coordination	1:2 per practice
Patient Family Advisory Councils (PFACs)	Beneficiary & Caregiver Experience 4.1	Future development	Care Coordination	1:2 per practice
Quality & Utilization Performance	Planned Care for Health Outcomes 5.1, eQMs	Execute follow-up based upon reports/outcomes	Care Coordination	1:2 per practice
24/7 Access	Access & Continuity 1.2	Practice manages on their own	Care Coordination	1:2 per practice
Referral Management	Comprehensiveness & Coordination 3.1	Practice manages on their own	Care Coordination	1:2 per practice
Other				

*Practice will have its own care manager to work in conjunction with the CTO and the CTO's offerings.

Final Practice Selection

- Package A (50%)
- Package D (30%)

Practice Signature SAMPLE Only – Do NOT Complete Now CTO Signature SAMPLE Only – Do NOT Complete Now

SAMPLE

Appendix C:
Business Associate Agreement
between the CTO and the Practice



BUSINESS ASSOCIATE AGREEMENT
ADDENDUM TO AN AGREEMENT FOR SERVICES INVOLVING ACCESS, USE,
CREATION, OR TRANSMISSION OF PROTECTED HEALTH INFORMATION

This Business Associate Agreement, effective on SAMPLE Only – Do NOT Complete Now, is between Atlantic General Hospital Corporation, t/a Atlantic Health System and all entities affiliated with AGH/HS (the Hospital) and SAMPLE Only – Do NOT Complete Now (the Business Associate).

RECITALS

WHEREAS, Hospital and Business Associate are parties to an agreement pursuant to which Business Associate provides certain services to Hospital (the “Underlying Agreement”) and, in connection with those services, Hospital discloses to Business Associate individually identifiable protected health information (“PHI”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the American Recovery and Reinvestment Act of 2009 (“ARRA”) and the associated privacy regulations, 45 CFR Part 160 and subparts A and E of Part 164 (the “Privacy Rule”), and security standards, 45 CFR Part 160 and subparts A and C of Part 164 (the “Security Rule”), as amended from time to time;

WHEREAS, the parties desire to comply with HIPAA, ARRA and the standards for the privacy and security of PHI of patients of Hospital;

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, Hospital and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA, ARRA and the standards for the privacy and security, as may be amended from time to time.

1.2 **Individual** means the person who is the subject of protected health information, and shall have the same meaning as the term “individual” in 45 CFR § 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.3 **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as may be amended from time to time.

1.4 **Security Rule** means the Security Standards for Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C, as may be amended from time to time.

1.5 **Protected Health Information (“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 any individual; the provision of health care 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 same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Hospital.

1.6 **Electronic protected health information** means individually identifiable health information that is transmitted by, or maintained in, electronic media (electronic storage media, or transmission media used to exchange information already in electronic storage media), and shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103.

1.7 **Designated Record Set** means the medical records and billing records about individuals maintained by or for a covered entity, and shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.

1.8 **Required By Law** means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law, and shall have the same meaning as the term “required by law” in 45 CFR § 164.501.

1.9 **Secretary** shall mean the Secretary of the Department of Health and Human Services or his designee.

1.10 **Administrative safeguards** means administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Business Associate’s workforce in relation to the protection of that information, and shall have the same meaning as the term “administrative safeguards” in 45 CFR § 164.304.

1.11 **Physical safeguards** means physical measures, policies, and procedures to protect the Business Associate’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusions, and shall have the same meaning as the term “physical safeguards” in 45 CFR § 164.304.

1.12 **Technical safeguards** means the technology and the policy and procedures for its use that protect electronic protected health information and control access to it, and shall have the same meaning as the term “technical safeguards” in 45 CFR § 164.304.

1.13 **Security incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the same meaning as the term “security incident” in 45 CFR § 164.304.

SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Performance of Underlying Agreement. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Underlying Agreement or as Required By Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use appropriate safeguards, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information, and to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

2.3 Mitigation of Harm of Unauthorized Use or Disclosure. Business Associate agrees to mitigate, to the extent practicable and consistent with Hospital's approval of the proposed mitigation, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.4 Reporting of Unauthorized Use or Disclosure. Business Associate agrees to immediately report to Hospital in writing any use or disclosure of the Protected Health Information not provided for by this Agreement. Such report shall contain:

- A brief description of what happened, including the date of the unauthorized access or use of Protected Health Information, the identities of the persons whose PHI was accessed, acquired, used or disclosed, and the date of the discovery of the unauthorized access or use of PHI;
- A description of the types of unsecured Protected Health Information that were involved in the unauthorized access or use of Protected Health Information;
- Any recommended steps the individual whose Protected Health Information was inappropriately disclosed should take to protect themselves from the potential harm; and
- A brief description of what the Business Associate is doing to investigate the unauthorized access or use of Protected Health Information.

2.5 Reporting of Security Incident. Business Associate agrees to report to Hospital any security incident within twenty-four (24) hours of becoming aware of such security incident.

2.6 Use of Subcontractors.

2.6.1. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

2.7 Access to PHI. Business Associate shall make Protected Health Information maintained by Business Associate or its agents or subcontractors in a Designated Record Set available to Hospital or, as directed by Hospital, to an Individual, for inspection and copying within ten (10) days of a request by Hospital to enable Hospital to meet the requirements under 45 CFR § 164.524.

2.8 Amendments by Business Associate. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Hospital directs or agrees to pursuant to 45 CFR § 164.526 at the request of Hospital or an Individual, within thirty (30) days of receipt of a request from Hospital or Individual.

2.9 Access to DHHS. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Hospital, available to Hospital or the Secretary, in a time and manner designated by Hospital or the Secretary, for purposes of the Secretary determining Hospital's compliance with the Privacy Rule.

2.10 Documentation of Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Hospital to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.11 Accounting of Disclosures. Business Associate agrees to provide to Hospital or an Individual, within ten (10) days of receipt of a request from Hospital, information collected in accordance with Paragraph 2.10 of this Agreement, to permit Hospital to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.12 Opportunity to Object. Business Associate agrees that, if it has a legal obligation to disclose any PHI, it will notify Hospital as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that Hospital's rights would not be prejudiced, as to the legal requirement pursuant to which it believes the PHI must be released. If Hospital objects to the release of such PHI, Business Associate will allow Hospital to exercise any legal rights or remedies Hospital might have to object to the release of the PHI, and Business Associate agrees to provide such assistance to Hospital, at Hospital's expense, as Hospital may reasonably request in connection therewith.

2.13 Compliance. Business Associate agrees to implement a compliance program to assist in detecting unauthorized access or use of PHI.

2.14 To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).

SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Hospital as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Hospital or the minimum necessary policies and procedures of Hospital.

3.2 Specific.

3.2.1 Business Associate may use Protected Health Information to carry out the legal responsibilities of the Business Associate.

3.2.2 Business Associate may disclose Protected Health Information as required by law.

3.2.3 Business associate agrees to make uses and disclosures and requests for protected health information consistent with the Hospital's minimum necessary policies and procedures.

3.2.4 Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Hospital.

3.2.5 Business Associate may use protected health information for the Business Associate's proper management and administration or to carry out its legal responsibilities.

3.2.6 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Hospital as permitted by 42 CFR § 164.504(e)(2)(i)(B).

3.2.7 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1).

SECTION IV - OBLIGATIONS OF HOSPITAL

4.1 Hospital shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR § 164.520, as well as any subsequent changes or limitations to such notice to the extent that such changes or limitations may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Hospital shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4.3 Hospital shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Hospital has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

SECTION V - TERM AND TERMINATION

5.1 Term. The term of this Agreement shall be effective as of the inception of the party's underlying agreement, or the first receipt of PHI by the Business Associate, whichever is earlier, and shall terminate on the end date of the parties' underlying agreement or the last date on which Business Associate possess Hospital's PHI, whichever is later.

5.2 Termination for Cause. Upon Hospital's knowledge of a material breach by Business Associate, Hospital may provide an opportunity for Business Associate to cure the breach, or Hospital may immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, in Hospital's discretion. Hospital shall report the violation to the Secretary.

5.3 Effect of Termination.

5.3.1 Except as provided in Paragraph 5.3.2, upon termination of this Agreement, for any reason, Business Associate shall cease and desist all uses and disclosures of Hospital's Protected Health Information and shall immediately return or destroy (if Hospital gives written permission) in a reasonable manner consistent with HIPAA, all Protected Health Information received from Hospital, or created or received by Business Associate on behalf of Hospital, provided, however, that Business Associate shall reasonably cooperate with Hospital to ensure that no original Protected Health Information records are destroyed. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. Except as provided by Paragraph 5.3.2, Business Associate shall certify to Hospital that all Protected Health Information has been returned (or destroyed) within 30 days after termination or expiration of this Agreement.

5.3.2 In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Hospital notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health

Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

SECTION VI - INDEMNIFICATION AND INSURANCE

6.1 Indemnification. Business Associate shall indemnify, defend and hold Hospital and its parent corporation and subsidiaries, their directors, officers, agents, servants, and employees (collectively “the Indemnities”) from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney’s fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnities and relating to or arising out of any breach or alleged breach of the terms of this Agreement by Business Associate.

6.2 Insurance. If Hospital requires, Business Associate shall obtain and maintain insurance coverage against improper uses and disclosures of Protected Health Information by Business Associate, naming Hospital as an additional insured. Promptly following a request by Hospital for the maintenance of such insurance coverage, Business Associate shall provide a certificate evidencing such insurance coverage.

SECTION VII - DISCLAIMER

7.1 HOSPITAL MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE PRIVACY RULE WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE’S OWN PURPOSES. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PROTECTED HEALTH INFORMATION.

SECTION VIII - MISCELLANEOUS

8.1 Regulatory References. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect as of the date of this Agreement, or as subsequently amended.

8.2 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Hospital to comply with the requirements of the Privacy and Security Rules, ARRA and HIPAA, as amended. The parties further agree that notwithstanding the terms of this Agreement, the parties will do all things necessary to comply with the requirements of the Privacy and Security Rules, ARRA and HIPAA, as may be amended from time to time.

8.3 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, or transmitted by hand delivery.

8.4 Survival. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.

8.5 Interpretation. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA, ARRA and the Privacy and Security Rules. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, ARRA and the Privacy and Security Rules.

8.6 Transferability. Hospital has entered into this Agreement in specific reliance on the expertise and qualifications of Business Associate. Consequently, Business Associate’s interest under this Agreement may not be transferred or assigned or assumed by any other person, in whole or in part, without the prior written consent of Hospital.

8.7 No Third Party Beneficiary. The provisions and covenants set forth in this Agreement are expressly entered into only by and between Hospital and Business Associate and are intended only for their benefit. Neither Hospital nor Business Associate intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party, and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

8.8 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Maryland, without giving effect to its conflict of law provisions. Any controversy or claim arising out of or related to this Agreement shall be brought solely and exclusively in a court located in Worcester County, Maryland; provided, however, that either party may enforce any judgment rendered by such court in any court of competent jurisdiction. The parties hereby consent to, and waive any such challenge or objection to, personal jurisdiction and venue in Maryland.

8.9 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

8.10 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

8.11 Entire Agreement. This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in any way modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

Atlantic General Hospital/Health System
Hospital

__SAMPLE Only – Do NOT Complete Now__
Business Associate

By: __SAMPLE Only – Do NOT Complete Now__

By: __SAMPLE Only – Do NOT Complete Now__

Name: __SAMPLE Only – Do NOT Complete Now__

Name: __SAMPLE Only – Do NOT Complete Now__

Title: __SAMPLE Only – Do NOT Complete Now__

Title: __SAMPLE Only – Do NOT Complete Now__

Address: 9733 Healthway Drive

Address: __SAMPLE Only – Do NOT Complete Now__

Berlin, MD 21811

__SAMPLE Only – Do NOT Complete Now__

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