

Montgomery County Office of Family and Children First AgencyLink

PARTNER AGENCY PARTICIPATION AGREEMENT

WITNESSETH:

THIS AGREEMENT is made and entered into at Dayton, Ohio, as of the ____ day of _____, 2003, by and between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, (hereinafter referred to as the "Board") and _____ (hereinafter referred to as the "AgencyLink Partner Agency").

WHEREAS, the Board of County Commissioners of Montgomery County, Ohio, serves as the Administrative Agent for the Montgomery County Family and Children First Council; and

WHEREAS, the Montgomery County Family and Children First Council provides policy and management oversight for the AgencyLink Network project; and

WHEREAS, the Montgomery County Family and Children First Council has identified a need for a comprehensive social services network to improve communication, collaboration and reduce duplication of services in the community; and

WHEREAS, the AgencyLink Partner Agency, is able to provide improved services to clients by using the AgencyLink Network to securely communicate, collaborate and reduce duplication of services in the community; and

WHEREAS, the AgencyLink Partner Agency, agrees to use the AgencyLink Network and keep the required content current for improved communication, collaboration, and reduction of duplication with other AgencyLink Partner Agencies.

RECITALS

The Board has created the AgencyLink Network to improve enterprise reporting on social service needs, make available secure communication, collaboration, and to reduce duplication of human services delivery by agencies in Montgomery County, Ohio. The Network provides access to both confidential and public record information to authorized users through modules to retrieve, view and/or print demographic, casework, media and clinical information that partner agencies use to identify, access, make decisions on and track progress of clients they serve within the social service and criminal justices delivery systems in Montgomery County, Ohio.

The Montgomery County Office of Family and Children First and the AgencyLink Network are not considered a Health Plan, Health Care Clearinghouse, or Health Care Provider as defined by HIPPA; however, it is the intent of the Board to maintain client's rights to privacy and

confidentiality. To this end, OFCF has developed the AgencyLink Network privacy and security polices and process based on the HIPPA model to fulfill our duty to protect the confidentiality and integrity of confidential protected health information as required by law, professional ethics, and accreditation requirements and to provide our Partner Agencies a platform that meets HIPPA guidelines so they can share information among AgencyLink's Chain of Trust Partnership agreements. It is noted by FCFC and the Board that many of AgencyLink's Partner agencies will be covered entities or business associates if not both. This platform will provide a mechanism for partner agencies to securely transfer and warehouse PHI.

When applicable, within the purview of the AgencyLink Network, the term of "covered entity" can be substituted with "AgencyLink Network" and the term "business associate" can be substituted with "partner agency." In this light, all partner agencies, their officers, employees and agents agree to access, maintain, and release confidential information only when it is authorized by the client (unless identified by HIPPA which consent, authorization or opportunity to object is not required) in a confidential manner and to ensure that all non-confidential information needed for a successful knowledge portal for other partner agencies are kept current on a regular basis in accordance with this agreement.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS.

1.1 **Health Insurance Portability and Accountability Act of 1996 (HIPAA).** HIPAA is comprehensive law enacted during the Clinton administration. The law has several subparts providing such benefits as guaranteed portability and renewal of insurance benefits between employers, tax provisions for medical savings accounts and administrative simplification to improve the efficiency and effectiveness of the health care system. During the latter part of the 1990's, the Secretary of the Department of Health and Human Services drafted regulations for standardizing the electronic interchange of administrative and financial data and protecting the security and privacy of personal health information. HIPAA requires health care providers, health plans and health care clearinghouses to transition to the use of standard code sets and "electronic data interchange (EDI) and to maintain reasonable and appropriate administrative, technical, and physical safeguards to insure the integrity and confidentiality of healthcare information; to protect against reasonably foreseeable threats and hazards to the security or integrity of the information; and, to protect against unauthorized uses or disclosure of the information. Compliance with first of the HIPAA rules is scheduled for early 2003.

1.2 **Business Associate (BA) – AgencyLink Partner Agency (ALPA).** OFCF is not a Health Plan, Health Care Clearinghouse, or Health Care Provider but we have developed the AgencyLink Network privacy and security polices and process based on the CE HIPPA model. We did this to fulfill our duty to protect the confidentiality and integrity of confidential protected health information as required by law, professional ethics, and accreditation requirements. When

applicable, within the purview of the AgencyLink Network, the term of “Business Associate” can be substituted with “AgencyLink Partner Agency.” A “AgencyLink partner agency” is a person or entity that provides certain functions, activities, or services for clients in Montgomery County, involving the use and/or disclosure of PHI. Partner Agencies may disclose PHI to another Partner Agency with a valid authorization by the client. PHI is subject to re-disclosure if the information falls under the exceptions to the minimum necessary requirements outlined in AgencyLink’s Notice of Privacy Practices. Partner Agencies may also allow another Partner Agency to create or receive PHI on its behalf if that organization obtains satisfactory contractual assurance that the Partner Agency will appropriately safeguard the information.

1.3 Individually Identifiable Health Information (IIHI). A subset of health information, including demographic information collected from an individual and that is created or received by a health care provider and relates to the past, present, or future physical or mental health or condition of an 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 which identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

1.4 Protected Health Information (PHI). The final rule defines PHI as individually identifiable health information that is transmitted by electronic media; maintained in any electronic medium such as magnetic tape, disc, optical file; or transmitted or maintained in any other form or medium (i.e. paper, voice, Internet, fax etc.).

1.5 Designated Record Set. A group of records maintained by or for a covered entity including medical and billing records maintained by or for a healthcare provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintain by or for a health plan; or, information used, in whole or in part, by or for the covered entity to make decisions about clients. The term record means any item, collection or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

1.6 Healthcare Operations. Activities of a covered entity to the extent such activities are related to covered functions including quality assessment and improvement activities; credentialing health care professionals; insurance rating and other insurance activities related to the creation or renewal of a contract for insurance; conducting or arranging for medical review, legal services and auditing functions (including compliance programs); business planning such as conducting cost-management and planning analyses to managing and operating the entity including formulary development and administration, development or improvements for methods of payment or coverage policies; business management and general administrative activities; due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor is a covered entity or will become a covered entity; consistent with privacy requirements, creating de-identified health information, fundraising for the benefits of the covered entity, and marketing for which an individual authorization is not required.

1.7 De-identified PHI. OFCF may use PHI to create de-identified information, whether or not the de-identified information is to be used by OFCF. In order to be exempt from the privacy rule the information must not include any of the following identifiers for clients, relatives, household members, employers: names; geographic subdivisions smaller than a state

(some specific exceptions); all elements of dates except the year, for all under 89, and all elements of dates for those over 89; telephone or fax numbers, e-mail or IP addresses and URLs; social security number; medical record number; health plan beneficiary (UCI) number; account numbers; certificate or license numbers; vehicle identifiers; device identifiers; biometric identifiers (finger, retinal, voice prints); full face photographic images and the like; any other unique characteristic or code. With statistical expertise and documentation it is determined that the risk is very small that information could be used alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual.

1.8 The Office of Family and Children First. (OFCF) is the Montgomery County, Ohio Office that administrates and manages AgencyLink Network Modules' that contain PHI (e.g. Collaborative Case Management System.)

1.9 AgencyLink Network. The AgencyLink Network is an Information Technology system that contains PHI in its databases. This information is used to develop case plans and help clients reach goals by partner agencies that use the system.

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1.10 Mitigation. The act of causing an event or circumstance to become less harsh or hostile, or making an event or circumstance less severe or painful.

1.11 Harmful Effects. The definition of harmful effects is debatable. As it relates to the breach of privacy of an individual's protected health information, harmful effects may be determined by the impact of an unauthorized use or disclosure of PHI on such things as reputation, the safety of the person and significant others, health, employability, financial and social status, emotional distress and (*others*).

1.12 AgencyLink Authorization. The AgencyLink authorization is a document that is signed by the client that gives the partner agency the permission to use specified PHI for a specified purpose and length of time.

1.13 AgencyLink Implementation Service. The AgencyLink Implementation Service is a staged process that provides ramp up, training, stabilization and ongoing support and processes to AgencyLink Partner Agencies.

1.14 Designated Record Set. A group of records maintained by or for the agency that is:

1.14.1 The medical records and billing records about individuals maintained by or for the agency

1.14.2 The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan

1.14.3 Used, in whole or in part, by or for the agency to make decisions about the individual

1.15 Covered Entity (CE) - AgencyLink Network (AL). Means a health plan, a health care clearinghouse, or a health care provider that transmits any health information in electronic form relating to any covered transaction. OFCF is not a Health Plan, Health Care Clearinghouse,

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or Health Care Provider but we have developed the AgencyLink Network privacy and security policies and process based on the CE HIPPA model. We did this to fulfill our duty to protect the confidentiality and integrity of confidential protected health information as required by law, professional ethics, and accreditation requirements. When applicable, within the purview of the AgencyLink Network, the term of “covered entity” can be substituted with “AgencyLink Network.”

1.15.1 Health plan means an individual plan or group plan that provides, or pays the cost of, medical care [NOTE: includes the Medicaid or Medicare programs].

1.15.2 Health care clearinghouse means an entity that processes health information received in a nonstandard format into a standard format, or processes health information received in a standard format into a nonstandard format for another entity.

1.15.3 Health care provider means a provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

1.16 AgencyLink Authorized User. Those individuals that have (a) been designated by the Partner Agency as an officer, employee, or agent that has been authorized by OFCF to have access to the AgencyLink Network to access, review and post information, and (b) successfully completed the AgencyLink Implementation Service requirements.

1.17 AgencyLink Security Officer. The AgencyLink security officer oversees all ongoing activities related to the development, implementation, maintenance of, and adherence to OFCF’s policies and procedures covering the security of, and access to, patient health information in compliance with federal and state laws and the healthcare organization’s information privacy and security practices.

1.18 AgencyLink Privacy Officer. The AgencyLink privacy officer oversees all ongoing activities related to the development, implementation, maintenance of, and adherence to the OFCF’s policies and procedures covering the privacy of, and access to, patient health information in compliance with federal and state laws and the healthcare organization’s information privacy practices.

1.19 Notice of Privacy Practices. This document describes how medical information about clients will be used and disclosed by AgencyLink Partner Agencies and how clients can get access to this information.

1.20 Chain of Trust Partner Agreement. The chain of trust agreement is a document that ensures that the same level of security and privacy will be maintained at all links (partner agencies) in the chain when information is transferred electronically from one organization to another.

SECTION 2. OFCF RESPONSIBILITIES.

2.1 Authorized User Access Code. OFCF will supply user ID's and passwords for authorized users to access the AgencyLink Network through the Internet or the County WAN.

2.2 Audits. The OFCF AgencyLink Privacy Officer will conduct audits of client authorization forms, and other related review of authorized users of the AgencyLink Network. Such audits will be conducted by random sampling on a regular basis.

2.3 Privacy, Security and Critical Incident Response Plans. OFCF will be responsible for implementing policies, processes and measures of privacy, security and incident response to protect the confidentiality of client's records, protect against unauthorized access to those record and the processes and procedures to respond to a breach of privacy. Such measures will include, but are not necessarily limited to:

(a) **Access to Records.** Access to client's records will be restricted to only authorized users of partner agencies that successfully complete the AgencyLink Implementation Service.

(b) **Training.** OFCF will facilitate training of all authorized users of the AgencyLink Network. Training content will include such topics as end-user, privacy and security awareness, and confidentiality of records. This training is available through Instructor Led Training and includes a training manual. OFCF also can provide a training lab in the County Administration. Training is also available through Web based training and media available at the AgencyLink web site. OFCF may charge a reasonable fee for such training programs and material.

(c) **Denial of Access Upon Termination.** OFCF will deny access to any authorized user (a) upon notice from a partner agency, (b) upon notice pursuant to the terms of this Agreement, and (c) upon termination of the Agreement between OFCF and the Partner Agency.

(d) **Mitigation Plan.** OFCF will facilitate the development of a "mitigation plan" in the event patient confidentiality is compromised.

(e) **Accounting of Disclosure.** OFCF will keep an accounting of disclosures of PHI so clients can see who had access to their records.

(f) **Authorization.** OFCF will ensure an authorization is used to obtain client confidential information and to inform partner agencies of any changes in, or withdrawal of, the authorization provided to clients 45 C.F.R. § 164.506 or § 164.508.

(g) **Complaint & Amendment process.** OFCF will ensure a process is in place to ensure a client has the ability to view PHI and issue a complaint regarding confidentially and/or amend information that is stored in their confidential information.

(h) **Sanctions.** OFCF will ensure polices are in place to "sanction" partner agencies or authorized users who do not follow AgencyLink's privacy or security plan.

(i) **Chain of trust partner agreement.** OFCF will establish a Chain of Trust Partner Agreement with all AgencyLink Partner Agencies that have access to an AgencyLink Network module that contains PHI.

(j) **Personal configuration management.** OFCF will ensure all workstations are configured to provide secure connections to the AgencyLink Network.

(k) **Disaster Recovery and Contingency.** OFCF will ensure that the AgencyLink Network has a Disaster Recovery and Contingency Plan for PHI.

2.4 Annual Access Fees. OFCF will oversee the designation of annual access fees to partner agencies for use of the AgencyLink Network's Modules.

2.5 Inform Partner Agency on changes to the AgencyLink Privacy Practice Form. Any changes in the form of notice of privacy practices (the "Notice") that OFCF provides to Partner Agencies to give to clients pursuant to 45 C.F.R. § 164.520 will be communicated. OFCF will provide the partner agency a copy of the Notice currently in use as well as a copy of the new form.

2.6 Inform the Partner Agency of any opt-outs. OFCF will inform all partner agencies of any opt-outs exercised by any client from marketing and/or fundraising activities of AgencyLink pursuant to 45 C.F.R. § 164.514(e).

2.7 Notify Partner Agency of any changes to Privacy or security policy. OFCF will notify all Partner Agencies, in writing and in a timely manner, of any arrangements permitted or required of OFCF under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by a Partner Agency under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by OFCF.

2.8 Permission for research. Partner Agencies may make any use and/or disclosure of Protected Health Information permitted under 45 C.F.R. § 164.512 except uses or disclosure for research are not permitted without prior approval by OFCF.

SECTION 3. PARTNER AGENCY RESPONSIBILITIES

3.1 Confidentiality of Client Records. The Partner Agency is ethically and legally responsible for protecting the confidentiality of PHI. All client information or data, whether printed, written, spoken, or electronically produced, are part of the client's PHI. Only the client or his or her legal representative has the right to authorize the disclosure of PHI, unless in an emergency. The Partner Agency understands that while the client's records are the property of OFCF, the information within those records belongs to the client. Recognizing that the Partner Agency is only a custodian of the record for the client, except in those situations where records are being sent as part of a physician's referral, the Partner Agency must obtain prior client consent for

the release of records to other Partner Agencies. To protect the confidentiality of the client's records, the Partner Agency is responsible for performing the following:

(a) **Client Consent.** Partner Agency's who are not affiliated with the institution in which the information was provided or who is a new Partner Agency to the client are responsible for obtaining client authorization and submitting it to that Partner Agency in order to access the confidential information from AgencyLink, and for maintaining such authorization. Partner Agencies are further responsible for making such authorizations available to OFCF as part of its audit process pursuant to Section 2.3 and at such other times as OFCF reasonably request such documentation. The original authorization will be kept in the originating Partner Agencies client record while a scanned document will be uploaded to the client's record on the AgencyLink Network.

(b) **Passwords and User Authentication.** Authorized users are required to be registered with OFCF and have a valid user ID and password. The password shall meet certain minimum characteristics (such as minimum length, the use of multiple characteristics, and expiration dates at regular intervals) as provided by OFCF. To protect client confidentiality, both OFCF and Partner Agencies are responsible for overseeing that access be denied if a user is not authorized. Authorized users agree not to share their user ID and password with other people and realize that all AgencyLink modules create non-reputable logs of every authorized user's actions while they are using any of AgencyLink's modules. These logs will be used in any type of Incident Response and investigation.

(c) **Records.** Partner Agencies are responsible for maintaining a log of all authorized users with access to the AgencyLink Network and the role given to each authorized user within the Partner Agency. Partner Agencies are also responsible for updating this log and communicating a role changes or that the authorized user is no longer an officer, employee, or agent of the Partner Agency to OFCF within (3) business days of the change in status.

(d) **User Education.** The Partner Agency agrees to conduct and participate in AgencyLink training for authorized users, as well as to conduct their own training of users regarding the topics of security, confidentiality of client records, and authorized privileged uses for PHI, or any other area related to the confidentiality and protection of PHI records within the AgencyLink Network. OFCF will make their training lab available to Partner Agencies for AgencyLink Training. Partner agencies are responsible for orienting, educating, and periodically conducting inservices for authorized users regarding adherence to AgencyLink's Notice of Privacy Practices and the obligations set forth in this Agreement.

(e) **Authorized User Compliance.** Each Partner Agency will require all authorized users to read, and sign a written Authorized User Compliance Statement (attached in the form of Exhibit A), which states that the authorized user has read, understands, and agrees to be bound by sections 1 and 3 of this agreement.

3.2 Minimum Necessary (Need-To-Know Basis). The access, disclosure, or re-disclosure of client records will be limited to only those officers, employees, or agents of the partner agency who have a need to know about information contained in the records for planning, care, follow up and release of information purposes. The minimum necessary rule also applies to

other partner agencies that are involved with a client when that client has signed an authorization to share data between partner agencies.

3.3 Partner Agency Responsibility for Authorized User Actions. The Partner Agency recognizes and accepts full responsibility for the acts or omissions of their officers, employees and agents. The Partner Agency also recognizes that he or she is liable for damages due to the negligence or other acts or omissions of the Partner Agency's officers, employee or agent resulting from a breach of confidentiality.

3.4 Authorized Users responsible for their Actions. The authorized user recognizes and accepts full responsibility for their acts or omissions of PHI. The authorized user also recognizes that he or she is liable for damages due to the negligence or other acts or omissions resulting from a breach of confidentiality.

3.5 Payment of Annual Access Fees. Partner Agencies agrees to fully and promptly make payment of the annual access fees for the authorized users of the AgencyLink network's information.

3.6 Audits. The Partner Agency agrees to participate in reasonable periodic audits by the OFCF.

3.7 Hardware and Software. The Partner Agency agrees to provide and maintain the Partner Agency's own hardware, including computer workstations, computer monitors, hard drives, and keyboards, and all software programs which will receive data from AgencyLink as well as the associated cost thereto.

3.8 Update Online Community and Resource Directory Knowledge Base Content. The Partner Agency agrees to update and keep current all Online Community and Resource Directory information on a at least a quarterly basis.

3.9 Responsibilities of the Partner Agency with Respect to Handling of Designated Record Set. In the event that the Parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set, the Partner Agency hereby agrees to do the following:

- a. At the request of, and in the time and manner designated by the OFCF, provide access to the Protected Health Information to OFCF or the individual to whom such Protected Health Information relates or his or her authorized representative in order to meet a request by such individual under 45 C.F.R. § 164.524.
- b. At the request of, and in the time and manner designated by OFCF, make any amendments to the Protected Health Information that OFCF directs pursuant to 45 C.F.R. § 164.526. Provided, however, that OFCF makes the determination that the amendments are necessary because the Protected Health Information that is the subject of the amendments has been, or could foreseeably be, relied upon by the Partner Agency or others to the detriment of

the individual who is the subject of the Protected Health Information to be amended.

- 3.10 Responsibilities of the Partner Agency** With regard to its use and/or disclosure of Protected Health Information, the Partner Agency hereby agrees to do the following:
- a. Use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law.
 - b. Report to the designated AgencyLink Privacy Officer of OFCF, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which the Partner Agency becomes aware within five business days of the Partner Agency's discovery of such unauthorized use and/or disclosure.
 - c. Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information that the Partner Agency reports to the OFCF.
 - d. Use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information.
 - e. Require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Partner Agency pursuant to Section 2 of this Agreement.
 - f. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of HHS for purposes of determining OFCF's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
 - g. Upon prior written request, make available during normal business hours at Partner Agency's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the OFCF within 30 days for purposes of enabling the OFCF to determine the Partner Agency's compliance with the terms of this Agreement.
 - h. Within 45 days of receiving a written request from the OFCF, provide to the OFCF such information as is requested by the OFCF to permit the OFCF to respond to a request by an individual for an accounting of

the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528

- i. Subject to Section 5.5 below, return to OFCF or destroy, within 90 days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).
- j. Disclose to its subcontractors, agents or other third parties, and request from OFCF, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

SECTION 4. REPRESENTATIONS AND WARRANTIES

4.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

- a. That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- b. That neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.
- c. That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.
- d. That all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that the OFCF has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Partner Agency, in writing, and in a timely fashion.

- e. That it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

- f. That neither the Party, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.

SECTION 5. INDEMNIFICATION

Each party to this Agreement agrees to indemnify and hold harmless each and all of the other parties to this Agreement from and against any and all liability and expenses of any kind, including but not limited to costs and attorney's fees incurred by any or all of the other parties arising out of, or in any direct or indirect way related to, a breach of this Agreement by the party's employees, agents, or other representatives, or that are otherwise made public as a result of negligent or intentional action or inaction. Nothing in this provision shall be construed or operate to impose upon a party any obligation or duty to indemnify or hold harmless where the liability of one of the parties arises from the sole act of negligence, error, omission, breach, or default of one or all of the other parties.

SECTION 6. TERM

- 6.1 **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 6. In addition, certain provisions and

requirements of this Agreement shall survive its expiration or other termination in accordance with **Section 8.3** herein.

- 6.2 **Termination by OFCF.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), OFCF may immediately terminate this Agreement and any related agreements if OFCF makes the determination that the Partner Agency has breached a material term of this Agreement. (i.e. **Breach of Security.** In the event that OFCF reasonably believes that the confidentiality, security, or privacy of a client's medical records are endangered.) Alternatively, OFCF may choose to: (i) provide the Partner Agency with 30 days written notice of the existence of an alleged material breach; and (ii) afford the Partner Agency an opportunity to cure said alleged material breach (i.e. mitigation) upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within 30 days, the Partner Agency must cure said breach to the satisfaction of the OFCF within 45 days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement.
- 6.3 **Termination by Partner Agency.** If the Partner Agency makes the determination that a material condition of performance has changed under this Agreement, or that the OFCF has breached a material term of this Agreement, the Partner Agency may provide thirty (30) days notice of its intention to terminate this Agreement. Partner Agency agrees, however, to cooperate with OFCF to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as the Agreement is in effect.
- 6.4 **Automatic Termination.** This Agreement shall commence on the date of execution and shall be effective for a period of two (2) years.
- 6.5 **Automatic Renewal.** Upon the termination of the initial term, this Agreement shall be renewed automatically for successive one-year terms unless thirty (30) days prior to the next succeeding one-year renewal term, either party to this Agreement notifies the other party that it does not desire to renew this Agreement. In the event of such prior notification, this Agreement and any right to automatic renewals hereunder shall terminate at the end of the then current term.
- 6.6 **Effect of Termination.** Upon the event of termination pursuant to this Section 6, Partner Agency agrees to return or destroy all Protected Health Information pursuant to 45 C.F.R. § 164.504(e)(2)(1), if it is feasible to do so. Prior to doing so, the Partner Agency further agrees to recover any Protected Health Information in the possession of its subcontractors or agents. If it is not feasible for the Partner Agency to return or destroy said Protected Health Information, the Partner Agency will notify OFCF in writing. Said notification shall include: (i) a statement that the Partner Agency has determined that it is infeasible to return or destroy the Protected Health Information in its possession, and (ii) the specific reasons for such determination. The Partner Agency further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Partner

Agency's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible. If it is infeasible for the Partner Agency to obtain, from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, the Partner Agency must provide a written explanation to OFCF and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

SECTION 7.0 CONFIDENTIALITY OBLIGATIONS.

7.1 In the course of performing under this Agreement, each Party may receive, be exposed to or acquire the Confidential Information including but not limited to all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this Agreement, "Confidential Information" shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. The Parties including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party; (b) which is later publicly released by either Party in writing; (c) which is lawfully obtained from third parties without restriction; or (d) which can be shown to be previously known or developed by either Part, independently of the other Party.

SECTION 8. MISCELLANEOUS

8.1 **OFCE.** For purposes of this Agreement, OFCF shall include all entities covered by the joint notice of information practices (or privacy notice), which includes the Montgomery County Office of Family and Children First.

- 8.2 **Partner Agency.** For purposes of this Agreement, Partner Agency shall include the named Partner Agency herein. However, in the event that the Partner Agency is otherwise a covered entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.504(a), as the Partner Agency for purposes of this Agreement.
- 8.3 **Survival.** The respective rights and obligations of the Partner Agency and OFCF under the provisions of Sections **5.5, 7.2, 8.5, 8.8, 8.9 and Section 2.1** solely with respect to Protected Health Information Partner Agency retains in accordance with Section 5.5 because it is not feasible to return or destroy such Protected Health Information, shall survive termination of this Agreement indefinitely. In addition, Section 3 shall survive termination of this Agreement, provided that the OFCF determines that the Protected Health Information being retained pursuant to Section 5.5 herein constitutes a Designated Record Set.
- 8.4 **Amendments; Waiver.** This Agreement **may not** be modified, nor shall any provision hereof be **waived or amended**, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.\
- 8.4 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 8.5 **Entire Agreement.** This Agreement constitutes the entire understanding among the parties and supersedes all prior and contemporaneous understanding or agreements between the parties with respect to the subject matter of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- 8.6 **Assignments.** This Agreement may not be assigned by any party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties and the successors and assigns.
- 8.7 **Compliance.** The failure of either party to exercise any right, or to insist upon strict compliance with the terms by the other party shall not constitute a waiver of the term and conditions of the terms by the other party shall not constitute a waiver of the term and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all of the terms of this Agreement.
- 8.8 **Severability.** If any of the provisions of this Agreement is held to be illegal, invalid, or unenforceable in any respect, OFCF and the Partner Agency agree that such term or provision shall be deemed to be modified to the extent necessary to permit its enforcement to the maximum extent permitted by applicable law. If any provision of this Agreement is

Comment [elm3]: Check these numbers to ensure they are correct.

APPROVED AS TO FORM:
MATHIAS H. HECK, JR., Prosecuting Attorney
for Montgomery County, Ohio

BY: _____

DATE: _____

EXHIBIT A

GREATER DAYTON AREA HEALTH INFORMATION NETWORK

AUTHORIZED USER COMPLIANCE STATEMENT

I, _____, have read and understand Sections 1 and 3 of the Greater Dayton Area Health Information Network (GDAHIN) Participation Agreement. As an authorized user of the GDAHIN, I agree to be bound by these sanctions of the Participation Agreement. In particular, I agree to participate in training conducted by GDAHIN and the Participant. I further agree to comply with the confidentiality guidelines enumerated in the Participation Agreement to protect the privacy, confidentiality, and security of all patients' medical records. I understand that a failure to meet the requirements of these sanctions could result in termination of the Participation Agreement as well as potentially subjecting me to a claim for damages.

Name

Date

Date of Birth

UPIN (if applicable)

GREATER DAYTON AREA HEALTH INFORMATION NETWORK

**PATIENT CONSENT TO COMPUTERIZED ACCESS OF MEDICAL RECORDS
BY GREATER DAYTON AREA HEALTH INFORMATION NETWORK
PARTICIPANTS**

I understand that the Greater Dayton Area Hospital Association has established the Greater Dayton Area Health Information Network (“GDAHIN”) to provide users with access to non-confidential patient information such as patient demographics, eligibility status, and financial information, as well as the ability to access clinical information as authorized by participating hospitals. The GDAHIN also provides access to the Health Data Network (HDN) which provides and shares confidential patient information through this same computerized network. The HDN interface is designed to provide authorized users with a tool to retrieve, view and/or print patient demographic and clinical information. It is the intent of the HDN to maintain patients’ rights to privacy and confidentiality.

I understand that in order to access any confidential information related to my medical care, I must consent to the release of this information. **By signing this document, I hereby release to Participants in the GDAHIN access to my medical records for a period of one (1) year from the date of my signature.**

This authorization is for the purpose of allowing my treating health care practitioner(s) to review the medical information contained in my records as it related to my care and treatment either in its entirety, or as it related to my care and treatment during this current visit. This access includes, but is not limited to, any information concerning treatment for physician illness, mental illness, alcohol and drug abuse, HIV test results, and diagnosis of AIDS or AIDS related conditions.

I understand that signing this consent form does not relieve me from my obligations to share with my treating practitioner any personal medical information in my knowledge, such as allergies, existing medical conditions, and prior/current treatment, including all medications I presently may be taking. If I choose not to authorize access to any or all of my medical records, I understand that I may be denying my treating health care practitioner access to information that could be beneficial to my treatment.

I understand that I can refuse to give consent for access to my medical records at any time. I further understand that I may revoke this signed document at any time, except to the extent that actions have already been taken in reliance on my consent and without knowledge by the treating health care practitioner that I have revoked my consent. However, in the event of an emergency, I understand that any information necessary for my treatment in the judgement of my treating health care practitioners may be accessed without my consent.

Patient’s Signature/Legal Guardian’s Signature

Date