

## **School District Health Program Support Agreement**

This School District Health Program Support Agreement (the "Agreement") is made and entered into as of this the 12th day of July, 2016, by and between Lake Cumberland Regional Hospital, LLC, d/b/a Lake Cumberland Regional Hospital (the "Hospital"), and the Somerset Independent Board of Education (the "Board").

### **RECITALS:**

**WHEREAS**, the Board provides educational services to students residing in Pulaski County, Kentucky;

**WHEREAS**, as part of its educational mission, the Board is statutorily obligated to provide students enrolled in the Board's schools with certain health care services;

**WHEREAS**, the Board has entered into an agreement (the "Program Agreement") with the Lake Cumberland District Health Department ("LCDHD") pursuant to which LCDHD operates a preventive care health program in the Board's schools (the "Program");

**WHEREAS**, in connection with the Program, the Board will, beginning on or about July 1, 2015, employ registered nurses and makes such nurses available to LCDHD to provide preventive health care services to students who are enrolled in the Board's schools;

**WHEREAS**, to the extent permitted by applicable law and reimbursement policies, LCDHD bills and collects from the Kentucky Medicaid program for the preventive health care services that are provided through the Program to students who are enrolled in the Board's schools and are eligible for benefits under the Kentucky Medicaid program;

**WHEREAS**, LCDHD uses such reimbursement to compensate the Board for the services that are provided by the Board's registered nurses;

**WHEREAS**, despite such compensation, the Board incurs a significant loss in connection with the employment of the registered nurses and the provision of services to the Program and;

**WHEREAS**, given its current financial limitations, the Board is unable to *employ* the registered nurses and participate in the Program as it had been structured;

**WHEREAS**, the termination or limitation of the scope of the Program would result in a material loss of access to needed preventive and other health care services for the Board's students;

**WHEREAS**, the Hospital is committed to using its resources to better the health of everyone in its community; and

**WHEREAS**, the Hospital has determined that it is in the best of the community and the effective and efficient provision of health care services for the Board to employ registered nurses and provide services through the Program as a means of ensuring the health of children in the community; and

**WHEREAS**, the Hospital desires to provide financial support to the Board on a temporary basis in order for the Board to be able to continue to employ registered nurses and participate in the Program while the Board and LCDHD work to restructure the Program, and the Board desires for the Hospital to

provide the same, all on the terms and conditions set forth herein.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

**Section 1. Obligations of the Board.**

1.1 During the term of this Agreement, the Board shall participate in the Program in accordance with the terms of the Program Agreement. The Board shall give the Hospital a minimum of thirty (30) days prior written notice of the termination of the Program Agreement or the Program.

1.2 During the term of this Agreement, the Board shall employ a [minimum] [maximum] of \_\_\_\_\_ (\_\_\_\_) registered nurses (each a "Nurse" and, collectively, the "Nurses") to provide services at its schools. Each Nurse employed by the Board shall be licensed in good standing, without disciplinary or corrective action, to practice as a registered nurse in the State of Kentucky (the "State") and shall meet all of the other requirements set forth in the Program Agreement for the Nurses. The Nurses shall at all times during the term of this Agreement remain the employees of the Board, and no Nurse shall be considered to be an employee of the Hospital. All nurses employed by the Board shall receive certification by the Kentucky Education Professional Standards Board and shall otherwise meet all the requirements of the Somerset Independent Board of Education for employment. The Board retains the right to exercise direction and control over the Nurses in the performance of their services for the Board, and such control includes the right to reassign or terminate a Nurse. The Board shall be responsible for hiring, firing, supervising, payroll, and all other administrative functions related to the Nurses that are usually performed by an employer.

1.3 During the term of this Agreement, the Board shall, for itself and the Nurses, (i) maintain in force at all pertinent times at its sole expense a policy of general and professional liability insurance in the minimum amount of \$1 million per occurrence, \$3 million in the annual aggregate, or such higher amount as may be required by the laws of the State; and (ii) if applicable, participate in the appropriate state compensation fund. The Board shall furnish, at Hospital's request, a Certificate of Insurance evidencing the aforementioned coverage.

1.4 The Board shall indemnify and hold harmless to the extent allowed by law and to the extent of its insurance coverage Hospital and Hospital's affiliates, their officers, directors, employees, agents, successors and assigns from and against any claim, damage, loss, expense, liability, obligation, action or cause of action, including reasonable attorneys' fees and reasonable costs of investigation, which Hospital or Hospital's affiliates may sustain, pay, suffer or incur by reason of any negligent act or omission of the Board and its employees, including, but not limited to, the Nurses, in connection with the provision of services by the Nurses to the Board's students and the duties undertaken by the Board under this Agreement, including any claims for personal injury or wrongful death.

1.5 The parties acknowledge and agree that it is their intent to conduct their activities and to perform the duties required to be provided by each party hereunder in compliance with all applicable laws, rules, and regulations. As a result, in connection with support payments provided by Hospital under this Agreement, the Board agrees to the following: (i) the Board shall not require or encourage any of the Nurses or any of its employees to refer the Board's students (the "Students") or any of the Students' parents, legal guardians, or other family members to the Hospital or any of its affiliates, (ii) the Board shall not track referrals to or any other business generated for the Hospital or any of its affiliates (if any) by the Nurses or other Board employees, (iii) the Board shall ensure that the Students and their parents and legal guardians are advised of their freedom of choice in the selection of health care providers and will provide

such notification to the students and their parents in a document contained in the Somerset Independent Student Handbook, and (iv) neither the Board nor any of the Nurses shall actively publicize this Agreement or the support being provided to the Board by the Hospital hereunder to any Students or their parents or legal guardians.

1.6 The Board represents and warrants that as of the date of this Agreement: (i) neither it nor any of the Board's employees, shareholders, partners, subcontractors, and agents, including, but not limited to, the Nurses, is excluded, debarred or otherwise ineligible to participate in Medicare, Medicaid or any other federal or state health care programs or in any federal or state procurement or non-procurement programs; nor (ii) has the Board nor any of Board's employees, shareholders, partners, subcontractors, and agents, including, but not limited to, the Nurses, been convicted of a criminal offense related to the provision of federal health care items or services, that could lead to debarment or exclusion. The Board agrees to immediately notify the Hospital in the event the foregoing representation and warranty is no longer completely accurate. The Board shall indemnify and hold Hospital harmless to the extent allowed by law and to the extent of its insurance coverage if the foregoing representation and warranty ceases to be true at any time during the term of this Agreement. The Board acknowledges and agrees this is a material term of the Agreement and any breach or nonfulfillment of same will entitle Hospital to immediately terminate this Agreement.

## **Section 2. School District Health Program Support.**

2.1 During the term of this Agreement, so long as the Board is not in default hereunder, the Hospital agrees to provide financial assistance to ensure the Board's employment of the Nurses and participation in the Program. Such financial assistance shall be provided in accordance with the following:

2.1.1 The Hospital shall pay the Board an amount (the "Support Amount") equal to the direct salary and benefit costs incurred by the Board in the employment of the Nurses (collectively, the "Employment Costs") less (i) the sum of \$15,000 (the "School Contribution") for each of the Board's schools set forth on Exhibit A, attached hereto and incorporated herein by reference (collectively, the "Schools") and (ii) the amount of compensation received by the Board from LCDHD under the terms of the Program Agreement (the "Program Agreement Compensation"); provided, however, that the total Support Amount paid to the Board by the Hospital during the term of this Agreement shall not exceed \$200,000.

2.1.2 Within forty (40) days of the end of each three (3) month period of the term of this Agreement, the Board shall furnish the Hospital with a statement that sets forth (i) the Employment Costs, (ii) the Program Agreement Compensation, and (iii) the pro-rata portion of the School Contribution (\$3,750 per School) for the applicable three (3) month period.

2.1.3 In the event that the Employment Costs exceed the sum of (i) the Program Agreement Compensation and (ii) the pro-rata portion of the School Contribution, the Hospital shall, within ten (10) days of its receipt of the quarterly statement required to be provided by the Board under the terms of Section 2.1.2, above, pay the Board the Support Amount for the applicable three (3) month period; provided, however, that in no event shall the total Support Amount paid by the Hospital to the Board under this Agreement exceed \$200,000.

2.1.4 In the event that the Employment Costs are less than the sum of (i) the Program Agreement Compensation and (ii) the pro-rata portion of the School Contribution, the Board shall, within ten (10) days of the delivery of the quarterly statement required to be provided by the Board under the terms of Section 2.1.2, above, pay the Hospital the amount by which the Program

Agreement Compensation and the pro-rata portion of the School Contribution exceed the Employment Costs for the applicable three (3) month period; provided, however, that in no event shall the Board be required to pay the Hospital more than the total Support Amount paid by the Hospital to the Board under this Agreement. In the event a surplus remains after the Board has repaid all of the Support Amounts paid by the Hospital under this Agreement, such surplus shall be used to reduce the size of future Support Amount payments (if any) that are made by the Hospital hereunder.

2.1.5 The Hospital shall have the right to review and audit the Board's books and records relating to the employment of the Nurses and Program Agreement Compensation for whatever period of time is necessary to assure compliance with this Agreement. Additionally, the Board hereby grants to Hospital the right to directly access any and all information related to billing, collecting and revenue cycle from LCDHD. The parties acknowledge and agree that any such review, inspection, or audit shall be conducted in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996, the Federal Family Educational Rights and Privacy Act of 1974, the Kentucky Family Education Rights and Privacy Act, and the regulations promulgated under those Acts. The parties further agree to execute such additional documents as may be reasonably required to allow the Hospital to review and audit the books and records of the Board relating Support Amount paid by the Hospital hereunder, including, but not limited to, a Business Associate Agreement, an example of which is attached as Exhibit B.

2.2 Notwithstanding the foregoing, the Board expressly acknowledges and agrees that the Board is solely responsible for the payment of all salaries, benefits, payroll taxes, and other expenses for and relating to the Nurses and that nothing in this Agreement shall be construed as making the Hospital responsible for the payment of those amounts.

### **Section 3. Term and Termination.**

3.1 This Agreement will commence on the 1st day of July, 2016 (the "Effective Date"), and shall remain in effect for a period of one (1) year thereafter, unless sooner terminated as otherwise set forth herein.

3.2 Either party may terminate this Agreement, without cause, by providing not less than thirty (30) days prior written notice stating the intended date of termination. In the event that either party terminates this Agreement during the initial one (1) year term of this Agreement, the parties shall not enter into a different agreement for the same services until the first anniversary of the Effective Date.

3.3 In addition to any other termination rights that either party may have under this Agreement, either party may terminate this Agreement at any time in the event the other party engages in an act or omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the breaching party with written notice specifying the nature of the breach. The breaching party shall then have twenty (20) days from the date of the notice in which to remedy the breach and conform its conduct to this Agreement. If such corrective action is not taken within the time specified, this Agreement shall terminate at the end of the twenty (20) day period without further notice or demand.

3.4 The Hospital may terminate this Agreement immediately with cause upon written notice to the Board upon the occurrence of any of the following events:

3.4.1 The Program Agreement is terminated; or

- 3.4.2 The Board undergoes a general assignment for benefit of creditors, files a petition for relief in bankruptcy or under similar laws for the protection of debtors, or upon the initiation of such proceedings against the Board if the same are not dismissed within forty-five (45) days of service; or
- 3.4.3 Medicare, Medicaid, or any other federal, state, or local legislative or regulatory authority adopts any rule, regulation, policy, procedure or interpretation thereof or advice of Hospital's fiscal or legal counsel requires that this Agreement be terminated; or
- 3.4.4 The Board fails to maintain the insurance required to be provided under the terms of Section 1.3, above; or
- 3.4.5 Any of the representations and warranties made by the Board in Section 1.6, above, are no longer true and correct.

3.5 Upon any termination of this Agreement, neither party shall have further rights against, or obligations to, the other party except with respect to any rights or obligations accruing prior to the date and time of termination and any obligations, promises or agreements which expressly extend beyond the termination, and the obligation of the Hospital to make any additional payments of the Support Amount shall cease.

#### **Section 4. Miscellaneous.**

4.1 The parties are performing services and duties under this Agreement as independent contractors and not as employees, agents, partners of, or joint ventures with one another. Each party shall be responsible for determining the manner in which services are provided and insuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement.

4.2 As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, each party shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If either party carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, such party agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the Board, Hospital or either party's representative by virtue of this Agreement.

4.3 The parties expressly agree that nothing contained in this Agreement shall require either party to refer or admit any patients to, or order any goods or services from the other party. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC Section 1320a-7b).

4.4 Any notice required or permitted to be given hereunder shall be in writing and may be given by: (1) hand delivery and shall be deemed given on the date of delivery; (2) registered or certified mail and shall be deemed given the third day following the date of mailing; or (3) overnight delivery by

reputable overnight delivery services such as Federal Express or UPS and shall be deemed given the following day. All notices to the Board or Hospital shall be addressed to the Board or Hospital at the addresses as set forth below:

If to Hospital: Lake Cumberland Regional Hospital  
305 Langdon Street  
Somerset, Kentucky 42503  
Attention: Chief Executive Officer

With a copy to: LifePoint Hospitals, Inc.  
330 Seven Springs Way  
Brentwood, Tennessee 37027  
Attention: Legal Department

If to Board: Somerset Independent Board of Education  
305 College Street  
Somerset, KY 42501  
Attention: Superintendent

4.5 This Agreement contains the entire agreement of the parties hereto and supersedes all prior agreements, contracts and understandings, whether written or otherwise, between the parties relating to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.6 This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by the Board and the Hospital.

4.7 Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, the Hospital may assign this Agreement to any successor to all, or substantially all, of the Hospital's operating assets or to any affiliate of the Hospital. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

4.8 This Agreement is entered into for the sole benefit of the Board and the Hospital. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement.

4.9 No waiver of a breach of any provision of this Agreement will be construed to be a waiver of this Agreement, whether of a similar or different nature, and no delay in acting with regard to a breach shall be construed as a waiver of that breach.

4.10 Any provisions of this Agreement creating obligations extending beyond the term of this Agreement will survive the expiration or termination of this Agreement, regardless of the reason for such termination.

4.11 In the event any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall remain in full force and effect provided the fundamental rights and obligations remain reasonably unaffected.

4.12 This Agreement shall be governed by the laws of the State.

4.13 The Board acknowledges and agrees that this Agreement is confidential *to the extent* permitted by law. Neither the Board nor any of the Board's representatives shall disclose this Agreement or any terms hereof to any third parties except the LCDHD as needed for its Program Agreement with Board and as may be necessary to obtain advice and counseling from one's attorneys, accountants or financial advisors or as may otherwise be required through legal process, or by state and federal law, including, but not limited to, any applicable open records *and open meeting laws*.

4.14 Neither party discriminates against any person on the basis of race, color, national origin, disability or age in admission, treatment, program participation, services, activities or employment.

4.15 To the extent required by 42 C.F.R. section 411.357 (d) (1) (ii), all service agreements between the Board and the Hospital are maintained electronically in a master contract database that is maintained and updated centrally and is available for review upon request by an authorized governmental official.

4.16 The Hospital prohibits the use of the Hospital's name by any vendor or independent contractor, or the use of any name of the Hospital's parent company, subsidiaries, or affiliated facilities in any advertisement, press statement, or release, website, published customer list, or any publication or dissemination similar to the foregoing without receiving in advance the express written permission from Hospital's Chief Executive Officer. Any request for permission should include the complete text of the publication, statement, or document in which the name usage will appear and be subject to edit by Hospital.

4.17 The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective business reputations and the confidential nature of certain aspects of their relationship. Accordingly, any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration administered by the American Health Lawyers Association in accordance with its rules. The award or decision rendered by the arbitrator will be final, binding, and conclusive, and judgment may be entered upon such award by any court of competent jurisdiction. The arbitration process itself, and any other information or disclosures revealed by either party to the arbitrator or to the other party during the arbitration process will be confidential. No disclosure of the award shall be made by the parties except as required by the law or as necessary or appropriate to effectuate the terms thereof. The location of such arbitration shall be in the city where the Hospital is located unless the parties mutually agree to another location. The dispute shall be governed by the laws of the State. Further, the prevailing party shall be entitled to recover all costs and expenses associated with arbitration, including reasonable attorneys' fees. If the arbitrator determines that neither party has substantively prevailed, the parties shall bear equally the fees and costs of the arbitrator and the related expense of arbitration.

## **Section 5. Changes in Law.**

In the event that (i) Medicare, Medicaid, any third party payor or any federal, state or local legislative or regulatory authority adopts any law, rule, regulation, policy, procedure or interpretation thereof which establishes a material change to the manner of either party's operations under this Agreement and/or the costs related thereto, which changes do not give rise to immediate termination under Section 3.4, or (ii) counsel to Hospital determines that this Agreement or the arrangement set forth herein may subject the Hospital to fines or other penalties or the loss of the Hospital's certification to

participate in the Medicare and/or Medicaid programs, then, upon the request of either party materially affected by any such change in circumstances or determination, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while preserving the original intent of this Agreement to the greatest extent possible. If, after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days' prior written notice.

**IN WITNESS WHEREOF**, the parties hereto or their duly authorized representatives have executed this Agreement as of day and year first written above.

**BOARD:**

Somerset Independent Board of Education

By: 

Its: Superintendent

Date: July 12, 2016

**HOSPITAL:**

Lake Cumberland Regional Hospital, LLC  
d/b/a Lake Cumberland Regional Hospital

By: 

Its: CEO

Date: 8-1-16



**EXHIBIT A**

**Board Schools**

During the term of this Agreement, the following Schools will be employing Nurses and will be responsible for paying the School Contribution set forth in Section 2 of the Agreement:

- (1) **[Name of School]**

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made by and among the Somerset Independent Board of Education (herein referred to as "Covered Entity") and LifePoint Health (hereinafter individually and collectively referred to as "Business Associate"). Covered Entity and Business Associate shall be collectively referred to herein as the "Parties".

WHEREAS, Covered Entity is entering into a business relationship with Business Associate that is memorialized in that certain July, 2016, dated as of 12th, as may be amended from time to time (the "Underlying Agreement") pursuant to which Business Associate may be considered a "business associate" of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (collectively "HIPAA Law");

WHEREAS, the nature of the prospective contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information ("PHI") as that term is defined under HIPAA Law; and

For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of the HIPAA Law and relevant state law.

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**DEFINITIONS.** Terms not defined below shall have the meaning set forth in the HIPAA Law.

Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

Breach. "Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.

Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

Electronic Protected Health Information, EPHI or Electronic PHI. "Electronic Protected Health Information", "EPHI" or "Electronic PHI" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

Privacy Rule. "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 amended by the HITECH Act and as may otherwise be amended from time to time.

Protected Health Information or PHI. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. As used in this Agreement, Protected Health Information shall also include Electronic PHI.

Required by Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.

Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.

Security Rule. The "Security Rule" shall mean the regulations found at 45 CFR Part 160 and Part 164, Subparts A and C, as amended by the HITECH Act and as may otherwise be amended from time to time.

State Privacy and Security Laws. "State Privacy and Security Laws" shall mean all applicable state laws relating to privacy, security, data breach and confidentiality of the information provided to Business Associate under this Agreement.

Subcontractor. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR § 160.103.

Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" in 45 CFR §164.402.

## **APPLICABILITY**

This Agreement applies to all agreements and relationships between Covered Entity and Business Associate, whether written or verbal, pursuant to which Covered Entity provides or will provide any Protected Health Information to Business Associate in any form whatsoever (the "Underlying Agreement"). As of the Effective Date, this Agreement shall automatically amend and be incorporated as part of the Underlying Agreement, whether or not specifically referenced therein. Should there be any conflict between the language of this Agreement and the Underlying Agreement (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

## **USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.**

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, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule, if done by Covered Entity.

Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry its legal responsibilities. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).

Business Associate shall use reasonable efforts to limit uses, disclosures, and requests for PHI to the minimum necessary to accomplish the intended purposes of such use, disclosure or request, in accordance with the minimum necessary standards at 45 CFR § 164.502(b) and in any guidance issued by the Secretary.

## **DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

Business Associate shall comply with the applicable provisions of the Security Rule directing the implementation of Administrative, Physical and Technical Safeguards for Electronic Protected Health Information and the development and enforcement of related policies, procedures, and documentation standards (including but not limited to designation of a security official), and shall enter into written agreements with any Subcontractors that create, receive, maintain, or transmit Electronic Protected Health Information on behalf of Business Associate pursuant to which the Subcontractors shall agree to comply with the applicable requirements of the Security Rule. Business Associate shall implement safeguards and policies, procedures, and documentation consistent with the requirements of 45 C.F.R. §§ 164.306, 164.308, 164.310, 164.312, 164.314 and 164.316.

In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

Business Associate agrees to enter into a written agreement with any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate, which complies with the requirements of 45 C.F.R. § 164.504(e)(2) through (e)(4), and pursuant to which the Subcontractor agrees to the same restrictions and conditions that apply to Business Associate with respect to such PHI.

If Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate agrees to provide Covered Entity with timely access to such information, upon reasonable advance notice and during regular business hours, or, at Covered Entity's request, to provide an Individual with access to his or her Protected Health Information in order to meet the requirements under 45 CFR

§164.524 concerning access of Individuals to Protected Health Information. Business Associate shall notify Covered Entity within ten (10) days of receipt of any request for access by an Individual.

If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall amend the PHI maintained by Business Associate as directed by Covered Entity within fifteen (15) days of such request. Business Associate shall notify Covered Entity within ten (10) days of receipt of any request for amendment by an Individual.

Business Associate agrees to document and make available to Covered Entity such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 and Section 13405(c) of the HITECH Act, and any implementing regulations.

Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Business Associate as a result of this Section.

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

Business Associate may de-identify any PHI, provided such de-identification conforms to the requirements of 45 C.F.R. § 164.514 for de-identifying PHI. Business Associate may use or disclose such de-identified information at its discretion, as such de-identified information does not constitute PHI and is not subject to the terms of this Agreement.

To the extent Business Associate is to carry out any covered entity obligation of Covered Entity under the Privacy Rule, Business Associate shall agree to comply with the same Privacy Rule requirements that apply to Covered Entity in the performance of such obligation.

## REPORTING

**Privacy Breach.** Business Associate will report to Covered Entity any use or disclosure of Covered Entity's PHI that is not permitted by this Agreement or the Underlying Agreement within ten (10) business days of discovery of the unauthorized use or disclosure. In addition, Business Associate will report to Covered Entity following discovery and without unreasonable delay, but in no event later than ten (10) business days following discovery of any Breach of Unsecured Protected Health Information or any disclosure or inappropriate access of Covered Entity's information which is subject to State Privacy and Security Laws. Business Associate shall cooperate with Covered Entity in investigating the potential or actual breach, disclosure or inappropriate access and in meeting Covered Entity's obligations under the HITECH Act and any other state or federal privacy or security breach notification laws, including, without limitation, assisting the Covered Entity with performing a risk assessment as set forth in 45 C.F.R. §164.402(2) and providing any information and documentation related to such risk assessment to the Covered Entity promptly upon request. Any such report shall contain at a minimum the information set forth at 45 C.F.R. § 164.404(c).

**Security Incident.** Business Associate agrees to report to Covered Entity any Security Incident affecting Electronic Protected Health Information of Covered Entity within ten (10) business days of becoming aware of the Security Incident. Notwithstanding the foregoing, the parties acknowledge and agree that this Section V(B) constitutes notice by Business Associate of the ongoing existence and occurrence or

attempts of unsuccessful security incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful security incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the foregoing, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate shall mitigate, to the extent practicable, any harmful effect known to Business Associate of a Security Incident.

## **TERM AND TERMINATION.**

**Term.** The Term of this Agreement shall be effective as of the date the Underlying Agreement is effective (the "Effective Date"), and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section VI. Notwithstanding anything to the contrary contained in this Agreement, Business Associate shall not destroy any Protected Health Information without the prior written consent of Covered Entity.

**Termination for Cause.** Upon Covered Entity's knowledge of a breach by Business Associate, Business Associate's violation of the HIPAA Laws or a Breach of Unsecured Protected Health Information by Business Associate or any Subcontractor of Business Associate, Covered Entity shall provide Business Associate with thirty (30) business days within which to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within such time, terminate this Agreement; or immediately terminate this Agreement, if cure is not possible.

### **Effect of Termination.**

Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity within twenty (20) days of the effective date of the termination. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.

In the event that Business Associate determines that returning or destroying the 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.

**VII. LIMITATION OF LIABILITY.** Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any incidental, consequential, special or punitive damages in connection with this Agreement, even if the other party has been made aware of the possibility of such damages.

**VIII. MODIFICATION.** This Agreement may only be modified through a writing signed by the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Law.

**IX. INTERPRETATION OF THIS CONTRACT IN RELATION TO OTHER CONTRACTS BETWEEN THE PARTIES.** Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties

specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

**XI. MISCELLANEOUS.**

Ambiguity. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the HIPAA Law.

Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Address:

Attention:

Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: LifePoint Health  
330 Seven Springs Way  
Brentwood, TN 37027  
Attention: HSC Privacy Officer, Compliance

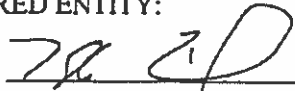
With copy to: LifePoint Health  
330 Seven Springs Way  
Brentwood, TN 37027  
Attention: Legal Department

*[Signature page follows]*


IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

Note: School signed under Covered Entity and should be Business Associate. We drew arrow and noted in our contract system.

COVERED ENTITY:

By:   
Name: Kyle B. Lively  
Title: Superintendent

BUSINESS ASSOCIATE:

By:   
Name: Timothy A Bess  
Title: CEO



