

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement"), dated _____, 20__, ("Effective Date") is entered into by and between **Sanvello Health, Inc.** (the "Business Associate") and [_____] (the "Covered Entity") (each a "Party" and collectively the "Parties"). This Agreement is made a part of the Medical Professionals Agreement by and between Covered Entity and Business Associate, as the same may be amended from time to time (the "Medical Professionals Agreement").

The parties hereby agree as follows:

1. DEFINITIONS

- 1.1 All capitalized terms used in this Agreement not otherwise defined in this Agreement have the meanings established in either the Agreement or for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by HITECH, as each is amended from time to time (collectively, "HIPAA"). To the extent a term is defined in both the Agreement and in this Agreement or in HIPAA, the definition in this Agreement or in HIPAA, shall govern.
- 1.2 "Affiliate" shall have the meaning ascribed to it in the Agreement. If the term "Affiliate" is not defined in the Agreement, then "Affiliate" shall mean, for purposes of this Agreement, any subsidiary of UnitedHealth Group Inc.
- 1.3 "Breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exclusions set forth, in 45 C.F.R. § 164.402.
- 1.4 "Breach Rule" means the federal breach regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 C.F.R. Part 164 (Subpart D).
- 1.5 "Compliance Date" means the later of September 23, 2013 or the effective date of the Agreement.
- 1.6 "Electronic Protected Health Information" or "ePHI" means PHI that is transmitted or maintained in Electronic Media.
- 1.7 "HITECH" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and all associated existing and future implementing regulations, when and as each is effective.
- 1.8 "PHI" means Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received, maintained, created or transmitted on behalf of, Covered Entity (for itself and/or applicable Covered Entity customers) by Business Associate in performance of the Services.
- 1.9 "Privacy Rule" means the federal privacy regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).
- 1.10 "Security Rule" means the federal security regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 C.F.R. Parts 160 and 164 (Subparts A & C).

1.11 “Services” as used in this Agreement, means, to the extent and only to the extent they involve the receipt, creation, maintenance, transmission, use or disclosure of PHI, the services provided by Business Associate to Covered Entity as set forth in the Agreement.

2. RESPONSIBILITIES OF BUSINESS ASSOCIATE

With regard to its use and/or disclosure of PHI, Business Associate agrees to:

2.1 not use and/or further disclose PHI except as necessary to provide the Services, as permitted or required by this Agreement, the Medical Professionals Agreement, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), or as otherwise Required by Law; provided that, to the extent Business Associate is to carry out a Covered Entity’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to that Covered Entity in the performance of those obligations.

2.2 implement and use appropriate administrative, physical and technical safeguards and, as of the Compliance Date, comply with applicable Security Rule requirements with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this Agreement, including at a minimum, but in any event not limited to, any safeguards set forth in the Agreement or other applicable contracts or agreements between the parties. For the avoidance of doubt, the requirements set forth in the Agreement or other applicable contracts or agreements between the parties do not limit in any way whatsoever Business Associate’s obligations under this Section 2.2 to comply with applicable Security Rule requirements.

2.3 without unreasonable delay, and in any event on or before forty-eight (48) hours after its discovery by Business Associate, report to Covered Entity in writing: (i) any use or disclosure of PHI not provided for by this Agreement of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(i)(C).

2.4 without unreasonable delay, and in any event on or before forty-eight (48) hours after its Discovery by Business Associate, notify Covered Entity of any incident that involves an unauthorized acquisition, access, use or disclosure of PHI, even if Business Associate believes the incident will not rise to the level of a Breach. The notification shall include, to the extent possible, and shall be supplemented on an ongoing basis with: (i) the identification of all individuals whose Unsecured PHI was or is believed to have been involved; (ii) all other information required for or requested by Covered Entity (or the applicable Covered Entity) to perform a risk assessment in accordance with 45 C.F.R. § 164.402 with respect to the incident to determine whether a Breach of Unsecured PHI occurred; and (iii) all other information reasonably necessary to provide notice to the applicable Covered Entities individuals, HHS and/or the media, all in accordance with the Breach Rule. Notwithstanding the foregoing, in Covered Entity’s sole discretion and in accordance with its directions, and without limiting in any way any other remedy available to Covered Entity at law, equity or contract, including but not limited to any rights or remedies the Covered Entity may have under the Agreement, Business Associate (i) shall conduct, or pay the costs of conducting, an investigation of any incident required to be reported under this Section 2.4, (ii) shall reimburse and pay Covered Entity for all expenses and costs incurred by Covered Entity that arise from an investigation of any incident required to be reported under this Section 2.4 and (iii) shall provide, and/or pay the costs of providing, the required notices as set forth in this Section 2.4.

2.5 in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), ensure that any subcontractors of Business Associate that create, receive, maintain or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate with respect to that PHI, including complying with the applicable Security Rule requirements with respect to ePHI; provided that, in any event

Business Associate shall require its subcontractors (and shall require those subcontractors to require their subcontractors) to report to Business Associate any use or disclosure of PHI or Security Incident required to be reported under Sections 2.3 and 2.4 on or before forty-eight (48) hours after its discovery by any of those subcontractors.

2.6 make available its internal practices, books and records relating to the use and disclosure of PHI to the Secretary for purposes of determining the applicable Covered Entity's compliance with the Privacy Rule.

2.7 document, and within thirty (30) days after receiving a written request from Covered Entity, make available to Covered Entity information necessary for Covered Entity or its applicable Covered Entity customer to make an accounting of disclosures of PHI about an Individual or, when and as requested by Covered Entity, make that information available directly to an Individual, all in accordance with 45 C.F.R. § 164.528 and, as of the later of the date compliance is required by final regulations or the effective date of the Agreement, 42 U.S.C. § 17935(c).

2.8 provide access to Covered Entity, within fifteen (15) days after receiving a written request from Covered Entity, to PHI in a Designated Record Set about an Individual, or when and as requested by Covered Entity, provide that access directly to an Individual, all in accordance with the requirements of 45 C.F.R. § 164.524, including as of the Compliance Date, providing or sending a copy to a designated third party and providing or sending a copy in electronic format in accordance with 45 C.F.R. § 164.524.

2.9 to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within thirty (30) days after a written request by Covered Entity, PHI for amendment and incorporate any amendments to the PHI as requested by Covered Entity, all in accordance with 45 C.F.R. § 164.526.

2.10 accommodate reasonable requests for confidential communications in accordance with 45 C.F.R. § 164.522(b), as requested by Covered Entity or as directed by the Individual to whom the PHI relates.

2.11 notify Covered Entity in writing within three (3) days after Business Associate's receipt directly from an Individual of any request for an accounting of disclosures, access to or amendment of PHI or for confidential communications as contemplated in Sections 2.7-2.10.

2.12 request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 45 C.F.R. §§ 164.502(b) and 164.514(d) as of the Compliance Date.

2.13 not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 45 C.F.R. § 164.502(a)(5)(ii) as of the Compliance Date.

2.14 not make or cause to be made any communication about a product or service that is prohibited by 45 C.F.R. §§ 164.501 and 164.508(a)(3) as of the Compliance Date.

2.15 not make or cause to be made any written fundraising communication that is prohibited by 45 C.F.R. § 164.514(f) as of the Compliance Date.

2.16 mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that is not permitted by the requirements of this Agreement.

2.17 comply with all applicable federal, state and local laws and regulations.

2.18 not use, transfer, transmit or otherwise send or make available, any PHI outside of the geographic confines of the United States of America without Covered Entity's advance written consent.

2.19 Government Program Requirements. To the extent that Business Associate receives, uses or discloses PHI pertaining to Individuals enrolled in managed care plans through which Covered Entity or one or more of its affiliates participate in government funded health care programs, receipt, use and disclosure of the PHI pertaining to those individuals shall comply with the applicable program requirements.

2.20 Privacy and Safeguards for NPI. Business Associate understands and acknowledges that to the extent it is a nonaffiliated third party under GLBA that creates or receives NPI from or on behalf of Covered Entity or an Affiliate, Business Associate and its authorized representatives: (i) shall not use or disclose NPI for any purpose other than to perform its obligations under the Agreement; (ii) shall implement appropriate administrative, technical, and physical safeguards designed to ensure the security and confidentiality of the NPI, protect against any anticipated threats or hazards to the security or integrity of the NPI and protect against unauthorized access to or use of the NPI that could result in substantial harm or inconvenience to any consumer; and (iii) shall, for as long as Business Associate has NPI, provide and maintain appropriate safeguards for the NPI in compliance with this Agreement and the GLBA.

2.21 Substance Use Disorder Information. Some of the PHI provided to Business Associate by a Covered Entity or an Affiliate may be substance use disorder information subject to the confidentiality requirements set forth in 42 C.F.R. Part 2 ("Part 2 Records"). Covered Entity or an Affiliate hereby report, and Business Associates hereby acknowledges, that: (i) Covered Entity or an Affiliate may act as a lawful holder of PHI that includes Part 2 Records; (ii) Covered Entity or an Affiliate may disclose Part 2 Records to Business Associates for payment and/or health care operations activities; (iii) upon receipt of Part 2 Records, the Business Associates are fully bound by the requirements of 42 C.F.R. Part 2 if applicable; (iv) 42 C.F.R. Part 2 prohibits unauthorized disclosure of Part 2 Records; and (v) this notice satisfies the requirements of 42 C.F.R. § 2.32 with respect to the Part 2 Records until such time as further guidance from the Secretary indicates otherwise. To the extent Business Associate receives Part 2 Records from Covered Entity or an Affiliate, the following more restrictive terms also apply:

a. Business Associate shall not re-disclose Part 2 Records to a third party unless the third party is an agent or a contractor of the Business Associate who: (i) has agreed to be fully bound by 42 C.F.R. Part 2 upon receipt of Part 2 Records; (ii) is helping the Business Associate to carry out the requirements described in this Restated Agreement (iii) has received notice that 42 C.F.R. Part 2 prohibits unauthorized disclosure of Part 2 Records; and (iv) has agreed to only further disclose the Part 2 Records: (a) to its subcontractors who have agreed to be fully bound by 42 C.F.R. Part 2 upon receipt of Part 2 Records; and (b) back to the Business Associate or the Covered Entity or an Affiliate from which the Part 2 Records originated.

3. OTHER PERMITTED USES AND DISCLOSURES OF PHI

Unless otherwise limited in this Agreement or the Medical Professionals Agreement, in addition to any other uses and/or disclosures permitted or required by such Agreements, Business Associate may:

3.1 use and disclose PHI, if necessary, for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law or any third party to which Business Associate discloses PHI for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only for the purpose for which it was disclosed to the third party or as Required by Law; and (ii) the third party promptly will notify Business Associate

of any instances of which it becomes aware in which the confidentiality of the information has been breached.

3.2 Use PHI to de-identify such PHI, in accordance with 45 C.F.R. § 164.514(a)-(c).

4. TERMINATION AND COOPERATION

4.1 Termination. If Covered Entity knows of a pattern or practice of Business Associate that constitutes a material breach or violation of this Agreement then Covered Entity may provide written notice of the breach or violation to Business Associate and Business Associate must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. If Business Associate fails to cure the breach or end the violation within the specified timeframe, Covered Entity may terminate this Agreement and the Agreement. Covered Entity also may terminate this Agreement and the Agreement to the extent that any of Covered Entity's applicable Covered Entity customers terminates its agreement with Covered Entity.

4.2 Effect of Termination or Expiration. Within thirty (30) days after the expiration or termination for any reason (or to any extent) of the Agreement and/or this Agreement, Business Associate shall return or destroy all applicable PHI, if feasible to do so, including all applicable PHI in possession of Business Associate's subcontractors. To the extent return or destruction of the PHI is not feasible, Business Associate shall notify Covered Entity in writing of the reasons return or destruction is not feasible and, if Covered Entity agrees, may retain the PHI subject to this Section 4.2. Under any circumstances, Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any applicable PHI retained after the expiration or termination (to any extent) of the Agreement and/or this Agreement, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

4.3 Cooperation. Each party shall cooperate in good faith in all respects with the other party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

5. MISCELLANEOUS

5.1 Construction of Terms. The terms of this Agreement to the extent they are unclear, shall be construed to allow for compliance by the applicable Covered Entity and Covered Entity with HIPAA.

5.2 Survival. Sections 4.2, 4.3, 5.1, 5.2, 5.3, 5.4, and 5.5 shall survive the expiration or termination for any reason of this Agreement.

5.3 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.4 Indemnification. Each Party ("Indemnifying Party") will indemnify and hold harmless the other Party ("Other Party") against any and all losses, liabilities, penalties, fines, costs, damages and expenses (collectively, "Losses") the Other Party incurs, including reasonable attorneys' fees, which arise out of: (i) the Indemnifying Party's or the Indemnifying Party's vendors' gross negligence or willful misconduct in the performance of the Indemnifying Party's or the Indemnifying Party's vendors', subcontractors' or representatives' obligations under this Agreement; or (ii) the Indemnifying Party's material breach of this Agreement, all as determined by a court or other tribunal having jurisdiction over the matter. Each Party shall provide the other with prompt notice of any claim that may trigger the foregoing indemnification requirements.

Upon demand by the Other Party, the Indemnifying Party shall defend any investigation, claim, litigation or other proceeding brought or threatened against the Indemnified Party, at the Indemnifying Party's expense, by counsel acceptable to the Indemnified Party. Neither Party shall enter into any settlement without the written consent of the other Party.

5.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of [Minnesota] (excluding its choice of law rules).

5.6 Counterparts. This Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

SANVELLO HEALTH, INC.

[COVERED ENTITY]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____