

Business Associate Agreement

This Business Associate Agreement (this "Agreement") is entered into this _____ day of _____, 2023 (the "Effective Date"), by and between Angel-Rx, LLC ("Business Associate") and City of Villa Rica ("Covered Entity"). Business Associate and Covered Entity may be referred to herein as a "Party" or the "Parties."

RECITALS:

Covered Entity provides services that pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") requires Covered Entity to restrict the uses and disclosures of Protected Health Information, as defined by HIPAA, in accordance with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and Subparts A and C as amended from time to time (the "Security Rule") under HIPAA, which was amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), as Title XIII Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5). Pursuant to the arrangement between Covered Entity and Business Associate (the "Service Agreement"), Business Associate may receive access to use or disclose Protected Health Information for the purposes of providing services to Covered Entity. Thus, to the extent Business Associate receives, uses, discloses or creates Protected Health Information in connection with services provided to Covered Entity and is deemed a "Business Associate" pursuant to the HIPAA laws, as amended by HITECH Act, Business Associate agrees to comply with the applicable regulations.

NOW, THEREFORE, the Parties, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby agree as follows:

1. **Definitions.** Unless otherwise provided in this Agreement, capitalized terms shall have the same meanings as set forth in the Standards for Privacy or Security of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A,C and E.
 - a. "**Breach**" shall have the same meaning as the term "breach" given in 45 C.F.R. §164.402, as amended by HITECH Act and shall include the unauthorized acquisition, access, use or disclosure of Protected Health Information that compromises the security or privacy of such information.
 - b. "**Designated Record Set**" shall mean a group of records maintained by or for a covered entity that is (i) the medical records and billing records about Individuals maintained by or for the covered entity, (ii) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a Health Plan, and (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For the purposes of this paragraph, the term "**Record**" means any items, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for covered entity.

- c. **“Electronic Protected Health Information” or “Electronic PHI”** shall have the meaning in 45 C.F.R. §160.103.
 - d. **“HHS”** shall mean the United States Department of Health and Human Services.
 - e. **“Individually Identifiable Health Information”** shall mean information that is a subset of health information, including demographic information, that is collected from an Individual and (1) is created or received by a covered entity or an employer; (2) relates to the past, present or future physical or mental health or condition of an Individual, the provision of healthcare to an Individual, or the past, present, or future payment for the provision of healthcare to an Individual; and (3) identifies the Individual, or there is a reasonable basis to believe the information can be used to identify the Individual.
 - f. **“Individual(s)”** shall have the same meaning as the term “individual” in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
 - g. **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information found at 45 C.F.R. Part 160 and Part 164, Subparts A and E, in effect or as amended, and with which compliance is required.
 - h. **“Protected Health Information (“PHI”)** shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103.
 - i. **“Required by Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. §164.103.
 - j. **“Secretary”** shall mean the Secretary of HHS or his/her designee.
 - k. **“Security Incident”** shall have the meaning as the term “Security Incident” in 45 C.F.R. §164.304, which means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an Information System.
 - l. **“Security Rule”** shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C, in effect or as amended, and with which compliance is required.
 - m. **“Unsecured PHI”** shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined by the HITECH Act.
2. **Obligations and Activities of Business Associate.** To the extent Business Associate satisfies the definition of a business associate under HIPAA, as amended by HITECH, Business Associate agrees to comply with the following:

- a. Permitted Uses. Business Associate agrees to use or disclose PHI in accordance with the terms of this Agreement or as Required by Law.
- b. Appropriate Safeguards. Business Associate agrees to implement appropriate and reasonable administrative, technical and physical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Reporting.
 - 1) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement or any successful Security Incident of which it becomes aware. Upon discovery of a breach of the security of PHI or a Security Incident, Business Associate shall notify Covered Entity within ten (10) business days. Notice should include the identification of each individual whose PHI has been or is reasonably believed to have been breached, the type of PHI that was believed to be disclosed, the mitigation actions taken by Business Associate to prevent future breaches and any other information necessary for the Covered Entity to comply with the notification requirements promulgated by HIPAA and HITECH. The parties acknowledge that this Agreement shall serve as notice of unsuccessful Security Incidents and the notice requirements described herein shall exclude trivial attempts that do not result in unauthorized access, use, disclosure, modification or destruction of PHI that is electronic PHI, nor result in material interference with system operations in an information system, including without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, and denials of service, which were successfully defended by Business Associate and did not provide access to the PHI or ePHI.
 - 2) Business Associate agrees to notify Covered Entity of any Breach of Unsecured PHI within ten (10) business days of the date Business Associate learns of the Breach. Business Associate shall provide such information to Covered Entity as required by 45 C.F.R. §164.410(c).
- e. Agents and subcontractors. Business Associate agrees to require subcontractors, to whom it provides PHI received from, or created on behalf of, Covered Entity, to comply in writing with the restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including the safeguards contained in this Agreement.
- f. Access to Protected Health Information. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to provide access to PHI

maintained in a Designated Record Set, within five (5) business days upon receipt of the request of Covered Entity.

- g. Amendment of Protected Health Information. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526, at the request of Covered Entity or an Individual, within five (5) business days from the receipt of such request.
- h. Governmental Access to Records. Business Associate agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received for Covered Entity, available to the Secretary, for the purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- i. Accounting of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity, to respond to an accounting of disclosures of PHI under 45 CFR §164.528, the HITECH Act guidance and the effective regulations regarding accounting for disclosures.
- j. Obligations of Covered Entity. Business Associate agrees that to the extent it performs one or more of the Covered Entity obligations under the Privacy Rule, Business Associate shall comply with the HIPAA Privacy Rule in the same manner that such Rule would apply to the Covered Entity in the performance of such obligation.
- k. Security Standards. Business Associate shall implement administrative, physical and technical safeguards for Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity, including without limitation, compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §164.308 (Administrative Safeguards), 45 C.F.R. §164.310 (Physical Safeguards), 45 C.F.R. §164.312 (Technical Safeguards) and 45 C.F.R. §164.316 (Policies and Procedures and Documentation Requirements).
- l. Agent Protection of Electronic PHI. Business Associate shall ensure that its subcontractors to whom it provides Electronic PHI, agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect that Electronic PHI, including compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §164.308 (Administrative Safeguards), 45 C.F.R. §164.310 (Physical Safeguards), 45 C.F.R. §164.312 (Technical Safeguards) and 45 C.F.R. §164.316 (Policies and Procedures and Documentation Requirements).
- m. Minimum Necessary. Business Associate acknowledges that it shall limit the use, disclosure or request of PHI to perform or fulfill a specific function required or permitted hereunder to the Minimum Necessary information, to accomplish the purpose of such use, disclosure or request as set forth in 45 C.F.R. §164.502(b).

n. Additional Restrictions. Notwithstanding any other provision in this Agreement, Business Associate shall comply with the effective provisions of HIPAA and its implementing regulations that apply to Business Associate, including the following:

- 1) the prohibition on sale of Protected Health Information without authorization, unless an exception under 45 C.F.R. §164.508(a)(4) applies; and
- 2) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. §164.501 unless permitted by this Agreement and 45 C.F.R. §164.508.

3. Permitted Uses and Disclosures by Business Associate.

- a. Services to Covered Entity. Subject to the provisions of this Agreement, Business Associate may use or disclose PHI as necessary to provide services to the Covered Entity or otherwise comply with its obligations under the Services Agreement.
- b. Management and Administration. Except as otherwise limited in this Agreement or the Service Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. In the event of disclosure of PHI to a third party for purposes described herein, Business Associate shall obtain satisfactory assurances from the receiving party that it shall maintain the privacy and security of the information, use or further disclose the information only as Required by Law or for the purposes for which the information was disclosed to the third party and notify Business Associate of any instances of a breach of confidentiality of the information.
- c. Data Aggregation. Business Associate may use PHI to provide data aggregation services relating to the health care operations of Covered Entity.
- d. De-Identification. In accordance with the applicable provisions of HIPAA, the Privacy Rule and the Security Rule, Business Associate may de-identify PHI received, created, maintained or transmitted by or to Business Associate pursuant to this Agreement, and use or disclose such de-identified information for any purpose permitted by applicable law.

4. Obligations of Covered Entity

- a. Revocation of Consent. Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Restrictions on Use of Protected Health Information. Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- c. Notice of Privacy Rights. Covered Entity shall provide Business Associate with notice of any restrictions on the use or disclosure of PHI provided in the Covered Entity's Notice of Privacy Practices, as such may be amended from time to time.

5. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate when all of the PHI 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 PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - b. Termination For Cause. In the event of a material breach of this Agreement by either Party, the non-breaching Party shall:
 - 1) Provide the breaching Party an opportunity to cure the material breach within thirty (30) days; or
 - 2) Immediately terminate this Agreement if a material term of this Agreement has been breached and cure is not possible; or
 - 3) If cure or immediate termination is not possible, a Party shall notify the other Party of its intent to report the material breach to the Secretary of HHS.
 - c. Effect of Termination. Except as provided below, upon termination or expiration of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- 6. Entire Agreement.** This Agreement supersedes any and all other agreements, whether oral or written, between the Parties with respect to PHI, and this Agreement contains all of the covenants and agreements between the Parties with respect to PHI in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any Party, or anyone acting on behalf of any Party, that are not embodied in this Agreement relating to PHI, and that no other agreement, statement, or promise not contained in this Agreement with respect to PHI shall be valid or binding.
- 7. Modification.** No change or modification of this Agreement shall be valid or binding unless the same is in writing and signed by each of the Parties hereto.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

9. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement or in the Service 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.

10. **Amendment.** This Agreement shall automatically be deemed amended and any conflicting terms shall be superseded by new regulations in order to support compliance with the HIPAA Privacy and Security Rule as amended through the regulatory process. Both Parties agree to comply with the applicable laws and regulations. Any other amendments or modifications shall only be amended through a written amendment by both parties.

11. **RESERVED**

Commented [JT1]: The city cannot waive claims pursuant to the gratuities clause in the Ga. Constitution.

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

ANGEL R-X, LLC

CITY OF VILLA RICA

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____