

## BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** ("**Agreement**") dated as of 4/23/2024 (the "**Effective Date**") is entered into by and between Niles Township High School District Educational Institution (the "**Covered Entity**"), and OnForm, Inc., a Delaware corporation (the "**Business Associate**").

Business Associate and Covered Entity have executed, are simultaneously executing or may execute in the future, an agreement under which Business Associate provides certain services to Covered Entity (the "**Services Agreement**"), which defines the activities, functions and services that Business Associate performs for Covered Entity.

This Agreement applies when the activities, functions and services that Business Associate performs for Covered Entity under the Services Agreement cause Business Associate to be considered a "business associate" under the regulations contained in 45 C.F.R. Parts 160 and 164, as amended (the "**HIPAA Rules**") promulgated under the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**") and the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 and all regulations promulgated thereunder, as amended (collectively, the "**HITECH Act**"), together with any guidance and/or regulation issued by the U.S. Department of Health and Human Services.

### 1. DEFINITIONS

#### 1.1 General Definitions

The following terms used in this Agreement shall have the same meanings as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.

#### 1.2 Specific Definitions

The following terms used in this Agreement shall have the same meanings as set forth above in this Agreement: Agreement, Business Associate, Covered Entity, Effective Date, HIPAA, HIPAA Rules, HITECH Act and Services Agreement.

### 2. OBLIGATIONS OF BUSINESS ASSOCIATE

#### 2.1 Prohibition on Use or Disclosure

Business Associate agrees not to Use or Disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law or if such Use or Disclosure does not otherwise cause a Breach of Unsecured Protected Health Information.

**2.1 Accounting of Disclosures**

**2.2 Safeguards**

Business Associate agrees to maintain and make available the information required to provide an Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement.

**2.3 Reporting**

Business Associate shall report to Covered Entity in writing: (a) any Use or Disclosure of Protected Health Information that is not permitted by this Agreement of which it becomes aware, (b) any Security Incident of which it becomes aware, except that, for purposes of this reporting requirement, the term "Security Incident" does not include inconsequential incidents that occur on a frequent basis such as scans or "pings" that are not allowed past Business Associate's firewall and (c) any Breach of Unsecured Protected Health Information as required by 45 C.F.R. 164.410 after discovery thereof.

**2.4 Mitigation**

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement or that would otherwise cause a Breach of Unsecured Protected Health Information.

**2.5 Subcontractors**

Business Associate agrees, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 45 C.F.R. 164.308(b)(2), if applicable, to require that any Subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree in writing to the same or substantially similar restrictions, conditions and requirements that apply to Business Associate with respect to such information.

**2.6 Access**

Business Associate agrees to make available Protected Health Information in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.

**2.7 Amendment**

Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

## **2.8 Accounting of Disclosures**

Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.528.

## **2.9 Covered Entity Obligation**

To the extent Business Associate is to carry out any obligation of Covered Entity under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E of 45 C.F.R. Part 164 that apply to Covered Entity in the performance of such obligation.

## **2.10 Internal Practices, Books and Records**

Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with Subpart E of 45 C.F.R. Part 164.

# **3. PERMITTED USES AND DISCLOSURES**

## **3.1 Services Agreement**

Business Associate may Use or Disclose Protected Health Information for purposes of performing its obligations under the Services Agreement.

## **3.2 De-identification**

Business Associate may de-identify Protected Health Information so long as (a) Business Associate complies with the requirements for de-identification of Protected Health Information set forth in 45 C.F.R. 164.514(b) and (b) such de-identification does not impair the integrity or availability of Protected Health Information. The parties acknowledge and agree that such information that has been de-identified is not Protected Health Information subject to HIPAA, the HIPAA Rules and the HITECH Act or the terms of this Agreement and that Business Associate may Use and Disclose such de-identified information for its commercial and other business purposes consistent with the limitations set forth in the Services Agreement.

## **3.3 Required by Law**

Business Associate may Use or Disclose Protected Health Information as Required by Law.

## **3.4 Minimum Necessary**

Business Associate shall Use, Disclose and request the minimum amount of Protected Health Information necessary in order to accomplish the purpose of the Use, Disclosure or request, provided that Covered Entity agrees not to provide any Protected Health Information to Business Associate, unless Covered Entity gives reasonable prior written notice to Business Associate

indicating that Covered Entity intends to provide Business Associate with Protected Health Information, under the Services Agreement.

### **3.5 Use or Disclosure Prohibition**

Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Subections 4.1, 4.2 and 4.3 below.

## **4. SPECIFIC USES AND DISCLOSURES**

### **4.1 Proper Management and Administration or Legal Responsibilities Use**

Business Associate may Use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

### **4.2 Proper Management and Administration or Legal Responsibilities Disclosure**

Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that (a) such Disclosure is Required by Law or (b) Business Associate obtains, in writing, prior to making any Disclosure to a third party (i) reasonable assurances from such third party that such Protected Health Information will be held confidential as provided under this Agreement and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to such third party and (ii) an agreement from such third party to notify Business Associate immediately of any breach of the confidentiality of the Protected Health Information of which it becomes aware.

### **4.3 Data Aggregation**

Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

## **5. OBLIGATIONS OF COVERED ENTITY**

### **5.1 Notice of Privacy Practices**

Covered Entity shall notify Business Associate of any limitation in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

### **5.2 Changes in or Revocation of Permission**

Covered Entity shall notify Business Associate of any changes in or revocation of permission by an Individual to Use or Disclose such Individual's Protected Health Information to the extent that such changes or revocation may affect Business Associate's Use or Disclosure of Protected

Health Information under this Agreement.

### **5.3 Covered Entity Use or Disclosure Restriction**

Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information under this Agreement.

### **5.4 Request Prohibition**

Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Subsections 4.1, 4.2 and 4.3 above.

## **6. TERM AND TERMINATION**

### **6.1 Term**

The term of this Agreement shall be in effect as of the Effective Date and shall terminate on the earlier of the date that either party terminates for cause under Subsection 6.2 or all of the Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is not feasible to return or destroy Protected Health Information, protections are extended in accordance with Subsection 6.3.

### **6.2 Material Breach**

Upon either party's knowledge of material breach by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation or terminate this Agreement. If the breaching party does not cure the breach or end the violation within a reasonable timeframe not to exceed thirty (30) days from the notification of the breach, or if a material term of this Agreement has been breached and a cure is not possible, the non-breaching party may terminate this Agreement and the Services Agreement, upon prior written notice to the other party.

### **6.3 Termination**

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity or created, maintained or received by Business Associate on behalf of Covered Entity shall: (a) retain only that Protected Health Information that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity or, if agreed

to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form; (c) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section 6, for as long as Business Associate retains the Protected Health Information; (d) not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Subsection 4.1 and 4.2 which applied prior to termination and (e) return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

#### **6.4 Survival**

The obligations of Business Associate under Subsections 6.1, 6.2, 6.3 and 6.4 shall survive the termination of this Agreement.

### **7. GENERAL PROVISIONS**

#### **7.1 Inconsistency or Conflict**

In the event of any inconsistency or conflict between the terms of this Agreement and the terms of the Services Agreement, the terms of this Agreement shall govern.

#### **7.2 Amendment**

The parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of HIPAA, the HIPAA Rules and the HITECH Act.

#### **7.3 Assignment and Binding**

This Agreement may not be assigned or otherwise transferred, in whole or in part, without the prior written consent of the other party and any attempted assignment in violation of this Subsection 7.3 shall be null and void, except that Business Associate may assign or transfer this Agreement without such consent to: (a) an affiliate pursuant to a corporate reorganization or (b) a third party in connection with a merger, acquisition, sale of assets, change of control, divestiture, joint venture, securities offering, financing, bankruptcy, reorganization, liquidation, dissolution or other transaction or if the ownership of all or substantially all of Business Associate's business otherwise changes. This Agreement will be binding on the successors and any permitted assigns of the parties.

#### **7.4 Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

**7.5 Interpretation**

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with HIPAA, the HIPAA Rules and the HITECH Act.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

**BUSINESS ASSOCIATE**

Name: Stephen Stank  
Title: Chief Security Officer  
Date: 4/24/24

**COVERED ENTITY**

Name: Phil Hintz  
3CE16BCC62114D8  
Title: Chief Technology Officer  
Date: 4/23/2024