

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

**This BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is made and entered into by and between Franciscan Alliance, Inc. d/b/a Franciscan Health Lafayette (“PROVIDER”) and The Tippecanoe County Board of Commissioners on behalf of Tippecanoe County Women, Infants & Children (“BUSINESS ASSOCIATE”).

RECITALS

- A. PROVIDER and BUSINESS ASSOCIATE have entered into, and may in the future enter into, one or more underlying contracts or purchase orders (“Underlying Contracts”) that will require BUSINESS ASSOCIATE to perform, or assist in the performance of a function or activity, or otherwise provide services of a type for PROVIDER which qualifies BUSINESS ASSOCIATE as a “Business Associate” as that term is defined by the Health Insurance Portability and Accountability Act of 1996 and all such regulations promulgated thereunder (“HIPAA”).
- B. BUSINESS ASSOCIATE, in fulfilling its obligations for and on behalf of PROVIDER, shall be expected to create or receive and maintain certain Protected Health Information and other forms of nonpublic personal information, including, but not limited to, social security numbers and other identifying information protected under applicable state law(s) (hereinafter collectively referred to as “PHI”) from time to time that is the property of PROVIDER.
- C. PROVIDER and BUSINESS ASSOCIATE desire to enter into this Agreement which shall supplement each of the Underlying Contracts, as required by HIPAA, in order to provide satisfactory assurances to PROVIDER that BUSINESS ASSOCIATE shall maintain appropriate Administrative, Physical and Technical Safeguards to protect the Confidentiality, Integrity and Availability of all such PHI in accordance with HIPAA as amended, including but not limited to the statutory amendments to HIPAA that were enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 (“ARRA”) which is entitled the Health Information Technology for Economic and Clinical Health (“HITECH”) Act (hereinafter collectively referred to as “HIPAA”) and other applicable requirements discussed herein. Except as supplemented, the terms of the Underlying Contracts shall continue unchanged and shall apply with full force and effect as to the matters addressed therein.

**NOW THEREFORE, PROVIDER and BUSINESS ASSOCIATE agree as follows:**

- 1. **Definitions.** All capitalized terms and phrases in this Agreement shall have the same meanings as defined by HIPAA and if not otherwise defined therein, shall have their ordinary and customary meaning:

2. **Restriction on Use and Disclosure of Protected Health Information.** BUSINESS ASSOCIATE shall not Use or Disclose PHI except as permitted or required by an Underlying Contract, this Agreement, or HIPAA.
3. **Authorized Uses and Disclosures.** BUSINESS ASSOCIATE is hereby authorized to Use and Disclose PHI on a “Need to Know” basis, but only in connection with the performance of the particular functions, activities or services set forth in the Underlying Contracts or as otherwise required by PROVIDER, in writing, from time to time. BUSINESS ASSOCIATE may also Use and Disclose PHI for the proper management and administration of BUSINESS ASSOCIATE or to carry out the legal responsibilities of BUSINESS ASSOCIATE; provided (a) the Disclosure is Required by Law; or (b) BUSINESS ASSOCIATE obtains reasonable assurances from the third party to whom the PHI is Disclosed that the PHI will be held confidential and will be Used or further Disclosed only for authorized purposes or as otherwise Required by Law, and the third party agrees to immediately notify the BUSINESS ASSOCIATE if there is any reason to believe the confidentiality of the PHI has been breached.
4. **BUSINESS ASSOCIATE Obligations.**
  - (a) **Compliance; Safeguards.** BUSINESS ASSOCIATE represents and warrants that BUSINESS ASSOCIATE has or will comply with the HITECH Act amendments to HIPAA on or before the compliance dates established therein. BUSINESS ASSOCIATE shall implement and document appropriate Administrative, Physical and Technical Safeguards in order to preserve the Confidentiality, Integrity and Availability of all PHI and to prevent any unauthorized Use or Disclosure of PHI, or any Breach or actual Security Incident, or other violation of HIPAA (hereinafter collectively referred to as “Incident”) and make all such documentation available to PROVIDER for review upon request.
  - (b) **Encryption.** BUSINESS ASSOCIATE shall encrypt PROVIDER files that are accessed, created, stored, or transmitted electronically by BUSINESS ASSOCIATE. Examples include but are not limited to files stored on their servers, workstation hard drives, email transmission, FTP, as well as any portable media. This provision is not meant to limit in any way any legal requirements imposed on a BUSINESS ASSOCIATE by law.
  - (c) **Reporting.** BUSINESS ASSOCIATE shall report to PROVIDER's Privacy Officer any Incident that BUSINESS ASSOCIATE has reason to believe has or may have resulted in a breach of the Confidentiality, Integrity or Availability of PHI. BUSINESS ASSOCIATE shall report all Incidents to PROVIDER's Privacy Officer, not more than twenty-four (24) hours after BUSINESS ASSOCIATE learns of the Incident. Said report shall identify: (i) the known facts and circumstances related to the Incident; (ii) the PHI that is known to be the subject of the Incident; (iii) the persons who are known to have information about the

Incident; and (iv) the corrective action that BUSINESS ASSOCIATE took or will take to mitigate any deleterious effects of the Incident and to prevent future Incidents. BUSINESS ASSOCIATE shall submit a written report to PROVIDER for review upon request. Additionally, BUSINESS ASSOCIATE, in its capacity as a “service provider” to PROVIDER under the FTC Red Flags Rule set forth at 16 CFR part 681, as amended, shall report to PROVIDER any suspicious circumstances or “red flags” indicative of actual or possible identity theft or deception as required therein.

- (d) **Agents, Contractors, and Subcontractors.** BUSINESS ASSOCIATE shall ensure that any agent, contractor, or subcontractor, to whom it provides Protected Health Information, agrees, in writing, to the same restrictions and conditions that apply to BUSINESS ASSOCIATE under this Agreement.
- (e) **Patient’s Access to PHI.** BUSINESS ASSOCIATE shall act in a manner that permits PROVIDER to permit Patient Access to PHI in accordance with HIPAA as amended.
- (f) **Amendment of PHI.** BUSINESS ASSOCIATE shall act in a manner that permits PROVIDER to make amendments to PHI in accordance with HIPAA, as amended.
- (g) **Accounting of Disclosures.** BUSINESS ASSOCIATE shall act in a manner that permits PROVIDER to provide an accounting of Disclosures to Patients in accordance with HIPAA, as amended.
- (h) **Practices, Books and Records.** BUSINESS ASSOCIATE shall 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 PROVIDER, available to the Secretary for the purpose of determining PROVIDER’S compliance with the HIPAA, subject to the BUSINESS ASSOCIATE’S professional obligations with respect to such practices, books and records. For purposes of clarity, this provision does not obligate BUSINESS ASSOCIATE to provide any information unrelated to the services provided to PROVIDER by BUSINESS ASSOCIATE pursuant to the Underlying Contracts.
- (i) **Cure of Noncompliance.** If PROVIDER notifies BUSINESS ASSOCIATE of any Incident, or alternatively, if BUSINESS ASSOCIATE notifies PROVIDER of an Incident under Section 4(c) herein, BUSINESS ASSOCIATE shall immediately take all steps necessary to cure any such Incident immediately, notwithstanding PROVIDER’S right to terminate the Underlying Contract(s) and this Agreement under Section 6(a) herein.

- (j) **Mitigation.** Business Associate shall take reasonable steps to mitigate, to the extent practicable, any harmful effect to PHI that is known to BUSINESS ASSOCIATE or communicated to BUSINESS ASSOCIATE by PROVIDER that is the result of any Incident; provided, however, that this provision shall not be deemed to permit or excuse any such violation.
- (k) **Legal Obligations.** In the event BUSINESS ASSOCIATE believes it has a legal obligation to further Disclose any PHI in BUSINESS ASSOCIATE'S possession, including, but not limited to obligations that arise from the issuance of a third party discovery request, subpoena or court order, BUSINESS ASSOCIATE shall notify PROVIDER as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that PROVIDER'S rights and interests would not be prejudiced, as to the legal requirement pursuant to which BUSINESS ASSOCIATE believes the PHI must be released. If PROVIDER objects to the release of such PHI, BUSINESS ASSOCIATE shall allow PROVIDER to exercise any legal rights or remedies which either PROVIDER or BUSINESS ASSOCIATE might have with respect to the further Disclosure of PHI.
- (l) **Return or Destruction of the PHI.** Upon the termination of the business relationship between PROVIDER and BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall return to PROVIDER, or, at PROVIDER'S direction, destroy, all PHI that BUSINESS ASSOCIATE has created or received and maintained or stored in any medium or storage system, pursuant to the Underlying Contracts, subject to any professional responsibilities of BUSINESS ASSOCIATE to maintain such information, in which event BUSINESS ASSOCIATE shall maintain all such PHI in accordance with its custom and practice with respect thereto. BUSINESS ASSOCIATE shall complete such return or destruction of PHI (if applicable) as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Underlying Contracts. BUSINESS ASSOCIATE shall identify any recorded PHI of PROVIDER that is in BUSINESS ASSOCIATE'S possession and which cannot feasibly be returned to PROVIDER or destroyed, and BUSINESS ASSOCIATE shall limit any further Use of that PHI to those purposes that make return or destruction of said PHI infeasible. Within said thirty (30) days, BUSINESS ASSOCIATE shall certify to PROVIDER, in writing and under oath, (i) that the return of all PHI has been completed; and (ii) that any PHI not returned will be Used or Disclosed by BUSINESS ASSOCIATE only for those purposes which make return of the PHI infeasible or not required. BUSINESS ASSOCIATE shall remain bound by the provisions of this Agreement, even after termination of any Underlying Contracts, until such time as all PHI has been (i) returned to PROVIDER; (ii) De-Identified; or (iii) otherwise destroyed as provided in this Section; provided that the parties understand and agree that certain unrecorded information cannot be returned, destroyed, or De-

Identified, so the BUSINESS ASSOCIATE shall remain bound by the provisions of this Agreement so long as BUSINESS ASSOCIATE possesses the PHI.

5. **Term of this Agreement.** This Agreement shall be effective when executed on behalf of both of the parties hereto and shall continue in full force and effect until the effective date of the termination, cancellation, expiration or other conclusion of all Underlying Contracts executed by and between the parties hereto.
6. **Remedies.**
  - (a) **Termination.** PROVIDER may terminate the business relationship between PROVIDER and BUSINESS ASSOCIATE, including any Underlying Contracts, agreements, arrangements or understandings, whether or not in writing, upon which the business relationship is based and such other agreements, arrangements or understandings are hereby amended to permit such termination, if PROVIDER determines that BUSINESS ASSOCIATE has violated a material term of this Agreement or HIPAA that cannot otherwise be cured by BUSINESS ASSOCIATE under Section 4(i) herein. Termination of the business relationship by PROVIDER shall be in addition to and not in place of any other remedies that may be available to PROVIDER.
  - (b) **Injunction.** Notwithstanding any other rights or remedies provided for in this Agreement, the parties agree that PROVIDER may seek injunctive relief to prevent or stop the unauthorized Use or Disclosure of PHI by BUSINESS ASSOCIATE, or any agent, subcontractor or other third party that received PHI from BUSINESS ASSOCIATE, without the necessity of proving actual damages or the occurrence of an unauthorized Use or Disclosure or other Security Incident.
7. **Indemnification.** BUSINESS ASSOCIATE shall indemnify and hold PROVIDER and each of its officers, employees, directors, agents and representatives (“Indemnified Persons”) harmless from and against any and all claims, losses, costs, damages, or expenses, including reasonable attorneys’ fees, that arise out of any actions or omissions by BUSINESS ASSOCIATE, or any of its officers, employees, directors, agents or representatives which result in a breach by BUSINESS ASSOCIATE of this Agreement or HIPAA as that term is defined herein. Without limiting the foregoing, PROVIDER shall give BUSINESS ASSOCIATE prompt written notice of such claim, suit, or proceeding. The parties hereto agree that no provision in the Underlying Contract(s) shall, in any way, modify or nullify this Section 7 in any manner.
8. **Conflicting Laws and Obligations.** If BUSINESS ASSOCIATE believes that it is unable to comply with any of its obligations under this Agreement due to any conflicting laws, regulations, pronouncements, or ethical obligations, it may seek a determination, or judgment, from a court of competent jurisdiction regarding its ability to comply with such

obligations, so long as such actions will not cause PROVIDER to be in violation of HIPAA.

9. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered mail, first class postage prepaid, return receipt requested, or by prepaid overnight delivery service such that proof of delivery will be obtained, and shall be addressed as set forth below or to such other address as may be specified in a prior written notice to the other party:

IF to PROVIDER:  
Franciscan Health Lafayette  
1501 Hartford Street  
Lafayette, Indiana 47903  
ATTN: Privacy Officer

IF to BUSINESS ASSOCIATE:  
Tippecanoe County WIC Program  
1322 Tippecanoe Street  
Lafayette, Indiana 47904  
ATTN: Alicia Keen, R.D., IBCLC

Such notice shall be deemed to be given on the date it is deposited in the mail as stated above, on the date it is given to the overnight delivery service, or the date it is given personally to the party to whom it is directed. A notice shall be deemed to have been given personally to a party if it is handed to the representative of the party to whom the notice must be addressed or if left at his or her office located at the street address to which a notice would be mailed.

10. **Amendment.** This Agreement may not be changed, modified, or amended except by a written agreement executed by an authorized representative acting on behalf of each of the parties.
11. **No Waiver.** No waiver of one or more of the provisions of this Agreement or the failure to enforce any provision of this Agreement by either party shall be construed as a waiver of any subsequent breach of this Agreement, or a waiver of the right at any time thereafter to require strict compliance with all of its terms.
12. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in it, and supersedes all prior discussions, agreements, and understandings of every kind and nature between them.
13. **Headings.** The headings placed before the various paragraphs and subparagraphs of this Agreement are inserted for each of reference only, do not constitute a part of this Agreement, and shall not be used in any way whatsoever in the construction or interpretation of this Agreement.
14. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of Indiana without reference to the choice of laws principles thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

**“PROVIDER”**

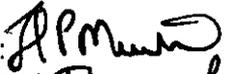
Franciscan Alliance, Inc. d/b/a

Franciscan Health Lafayette

BY:   
NAME: Terrance E. Wilson  
ITS: President/CEO  
DATED: 4/25/18

**“BUSINESS ASSOCIATE”**

Tippecanoe County Board of Commissioners, on behalf of Tippecanoe County Women, Infants & Children

BY:   
NAME: Thomas P. Murtagh  
ITS:  
DATED: 4-27-2018