



# Confidentiality Policy

<b>POLICY NUMBER</b> CM_1007	<b>SUBJECT</b> Confidentiality Policy	<b>DEPT/PROGRAM</b> Compliance	<b>PAGE 1 OF 28</b>
<b>DATES COMMITTEE REVIEWED</b> 09/28/10, 04/22/11, 06/27/11, 07/14/11, 11/09/11, 10/23/12, 12/11/13, 08/14/14, 10/13/14, 03/31/15, 12/10/15, 01/29/16, 09/14/16, 05/03/17, 02/21/18, 01/23/19, 11/27/19, 11/24/20, 11/18/21	<b>APPROVAL DATE</b> November 18, 2021	<b>EFFECTIVE DATE</b> November 18, 2021	<b>COMMITTEE APPROVAL DATES</b> 09/28/10, 04/22/11, 06/27/11, 07/14/11, 11/09/11, 10/23/12, 12/11/13, 08/14/14, 10/13/14, 03/31/15, 12/10/15, 01/29/16, 09/14/16, 05/03/17, 02/21/18, 01/23/19, 11/27/19, 11/24/20, 11/18/21
<b>PRIMARY BUSINESS OWNER:</b> Compliance		<b>COMMITTEE/BOARD APPROVAL</b> Compliance Committee	
<b>URAC STANDARDS</b>	<b>NCQA STANDARDS</b> UMA 3	<b>ADDITIONAL AREAS OF IMPACT</b> HITRUST	
<b>CMS REQUIREMENTS</b>	<b>STATE/FEDERAL REQUIREMENTS</b> 45 CFR Part 164 – Security and Privacy	<b>APPLICABLE LINES OF BUSINESS</b> All	

## I. PURPOSE

To ensure that all state and federal privacy and confidentiality laws are followed with respect to New Century Health and its clients' confidential and proprietary information, and that the information is protected and safeguarded.

## II. SCOPE

This policy applies to all employees, committee members, board members, temporary staff, consultants (including independent contractors, vendors, and auditors) and other individuals and companies employed by or doing business with New Century Health and having access to confidential and/or proprietary information regarding New Century Health or its clients.

## III. DEFINITIONS

**Business Associate Agreement:** a contract between a company and its vendors or subcontractors who will use protected health information (PHI), as defined by the Health Insurance Portability and Accountability Act (HIPAA), for administrative research, pricing, billing, quality-assurance, or other purposes specified by New Century Health and permitted by HIPAA.

**Non-Disclosure Agreement:** a legal contract that outlines confidential material, knowledge, or information that New Century Health and a third party wish to share only with one another for certain purposes. By signing the Non-Disclosure Agreement, the parties agree not to disclose the information covered by the agreement to any other person or entity.

**Non-Employee:** Inclusive term referring to contractors, consultants, temporary staff and/or agency staff that are contracted by New Century Health for service but are not employees of New Century Health.

## IV. ROLES & RESPONSIBILITIES

Human Resources, IT Team, Data Protection Officer, Security Officer, legal, Compliance Officer, and IT Risk and Security Committee are responsible for ensuring the activities outlined within this document are followed.

## V. POLICY

- A. A signed Business Associate Agreement (BAA) and/or a signed Non-Disclosure Agreement (NDA), including a statement explaining responsibilities to preserve confidentiality, is required of all committee members, and board members, as well as vendors, consultants, independent contractors and other individuals or entities designated by New Century Health. The type(s) of Agreement(s) to be signed by each such person or entity will be determined by New Century Health based upon the nature of the information to which such person or entity will have access and the purposes for which such access is granted.
- B. Non-employees will complete the same compliance training required by all New Century Health full or part time employees. This training includes: General Compliance; Fraud, Waste, and Abuse; HIPAA Basics; HIPAA Privacy and Security; Emergency Management; and anti-discrimination courses.
- C. If access to PHI is provided to third parties, the Compliance Officer must be consulted in connection with the need for execution of a Business Associate Agreement.
- D. The organization shall formally appoint a qualified data protection officer / privacy officer, reporting to senior management, and who is directly and fully responsible for the privacy of covered information. HITRUST Baseline ID# 1901.06d1Organizational.1
- E. When required, consent must be obtained before any PII (e.g., about a client/customer) is emailed, faxed, or communicated by telephone conversation, or otherwise disclosed to parties external to the organization. HITRUST Baseline ID# 1902.06d1Organizational.2
- F. NCH shall ensure PHI is safeguarded for a period of 50 years following the death of the individual. HITRUST Baseline ID# 1905.06c1Organizational.6
- G. NCH shall document compliance with the notice requirements by retaining copies of the notices issued by the organization for a period of six years and, if applicable, any written acknowledgements of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgement. HITRUST Baseline ID# 1906.06c1Organizational.2
- H. NCH shall document restrictions in writing and formally maintains such writing, or an electronic copy of such writing, as an organizational record for a period of six years. HITRUST Baseline ID# 1907.06c1Organizational.3
- I. NCH shall document and maintain records (PII) that are subject to access by individuals and the titles of the persons or office responsible for receiving and processing requests for access by individuals as organizational records for a period of six (6) years. HITRUST Baseline ID# 1908.06.c1Organizational.4

- J. NCH shall document and maintain accountings of disclosure as organizational records for a period of six years, including the information required for disclosure, the written accounting provided to the individual, and the titles of the persons or offices responsible for receiving and processing requests for an accounting. HITRUST Baseline ID# 1909.06c1Organizational.5
- K. Records with sensitive personal information must be protected during transfer to organizations lawfully collecting such information. HITRUST Baseline ID# 1911.06d1Organizational.13
- L. The public shall have access to public information about the organization's security and privacy activities and shall be able to communicate with its senior security official and senior privacy official. HITRUST Baseline ID# 19134.05j1Organizational.5
- M. NCH's formal policies and procedures, other critical records and disclosures of individuals' protected health information made must be retained for a minimum of six years; and, for electronic health records, the organization retains records of disclosures to carry out treatment, payment and health care operations for a must be retained for a minimum of three years. HITRUST Baseline ID# 19140.06c1Organizational.1

## VI. PROCEDURE

### A. Third-Party Disclosures

1. Whenever New Century Health determines that communications with third parties necessitate the release or disclosure (collectively, "disclosure") of confidential, sensitive, or proprietary information related to or in the possession of New Century Health, a standard New Century Health NDA must be signed by the third party.
2. The disclosure of any such information must be approved in advance at the VP level or above and must be limited to the topics directly related to the involved project or business relationship. If the disclosure may include PHI, the Compliance Officer must be consulted regarding the need for a BAA. Compliance and Legal must approve all BAAs prior to signature. Original signed BAAs must be sent to [contracts@evolenthealth.com](mailto:contracts@evolenthealth.com)
3. In some instances, before discussions can be commenced, third parties may require that employees at New Century Health sign the third party's NDA. Third-party NDAs must be forwarded to Legal for review. Upon approval from legal counsel, authority to execute the NDA on behalf of New Century Health is MD level and above. Original signed NDAs must be sent to [contracts@evolenthealth.com](mailto:contracts@evolenthealth.com).
4. When applicable, the Security and Privacy Officers will ensure PII is protected for a period of 50 years following the death of the individual. HITRUST Baseline ID# 1905.06c1Organizational.6

### B. Third-Party Access to Information

1. Before third-party users are permitted to reach New Century Health's internal systems through real-time computer connections, an executed NDA and specific written approval from HR, IT and the Compliance Officer must be obtained. These third parties include information providers such as outsourcing organizations, business partners, contractors, and consultants working on special projects. To the extent possible, information access should be limited in time and scope solely to information needed to complete the work specified by New Century Health.
2. Third-party information system vendors must be given only in-bound connection privileges when the applicable Sr. Director IT, ISO or above determines that they have a legitimate business need. These privileges must be enabled only for the time period required to

accomplish previously-defined and approved tasks. All third-party vendor access must be approved by the Sr. Director IT, ISO or above.

3. All third parties permitted to use New Century Health systems must be aware of the privacy and security requirements pertaining to PHI as set forth in HIPAA. The Compliance Officer must be consulted regarding the need for a BAA.
4. As a condition of gaining access to the New Century Health computer network, every third party must secure its own connected systems in a manner consistent with New Century Health system requirements. New Century Health must reserve the right to audit at its discretion and without prior notice the security measures in effect on third party-connected systems. New Century Health also must reserve the right to immediately terminate network connections with all third-party systems not meeting such requirements.

### C. Administration

1. For employees: Confidentiality Agreements are signed at the time of hire and revised as necessary by Human Resources.
2. For third parties: BAAs and/or NDAs, as appropriate, are executed prior to the disclosure of confidential, sensitive, or proprietary information, including PHI, and are revised, as necessary.
3. Signed original copies of NDAs and BAAs are retained in the Finance Department.
  - a. Compliance notices are retained for a period of six years and, if applicable, any written acknowledgements of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgement. HITRUST Baseline ID# 1906.06c1Organizational.2
  - b. Restrictions received in writing, or an electronic copy of such writing is retained for a period of six years. HITRUST Baseline ID# 1907.06c1Organizational.3
  - c. Records (PII) that are subject to access by individuals and the titles of the persons or office responsible for receiving and processing requests for access by individuals as organizational records are retained for a period of six (6) years. HITRUST Baseline ID# 1908.06.c1Organizational.4
  - d. Accountings of disclosures, including the written accounting provided to the individual, and the titles of the persons or offices responsible for receiving and processing requests for an accounting for a period of six (6) years. HITRUST Baseline ID# 1909.06c1Organizational.5
  - e. Records with sensitive personal information are transferred to organizations lawfully collecting such information as outlined in the NCH Retention Policy & Procedures. HITRUST Baseline ID# 1911.06d1Organizational.13
  - f. Formal policies and procedures, other critical records and disclosures of individuals' protected health information made are retained for a minimum of six years. HITRUST Baseline ID# 19140.06c1Organizational.1
  - g. Electronic health records are records of disclosures to carry out treatment, payment and health care operations are retained for a minimum of three years. HITRUST Baseline ID# 19140.06c1Organizational.1
4. All protected health information (PHI) that is transmitted by facsimile must include a fax coversheet with the following confidentiality statement:

**"Confidentiality Notice:** This facsimile transmission contains confidential information, some or all of which may be protected health information (PHI) as defined by the federal Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule. This transmission is intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure

under applicable law. If you are not the intended recipient (or an employee or agent responsible for delivering this facsimile transmission to the intended recipient), you are hereby notified that any disclosure, dissemination, use, distribution or copying of this information is strictly prohibited. If you have received this communication in error, *please notify the sender at New Century Health (888) 999-7713 to arrange the return or destruction of the information and all copies.*"

Employee who transmits PHI by facsimile should take reasonable precautions to either alert the intended recipient regarding the transmission or confirm the appropriate destination prior to sending the facsimile.

- a. Faxing of protected documentation (e.g., PII) can only be done if consent to fax is obtained and approved in advanced at the VP level or above. HITRUST Baseline ID# 1902.06d1Organizational.2

#### **D. Data Protection Officer / Privacy Officer**

The Legal Team, with recommendation from the IT Risk and Security Committee, appoints the Data Protection Officer / Privacy Officer. The individual(s) appointed to this position are required to have the skills required for the position. HITRUST Baseline ID# 1903.06d1Organizational.3456711

#### **E. Privacy Contact Information**

NCH / Evolent Health provides contact information via the website: <https://www.evolenthealth.com/privacy-policy>. The legal team in conjunction with the marketing team is responsible for ensuring this information is review at least annually and updated as required.

##### **Privacy Officer, Legal**

Evolent Health LLC  
800 N. Glebe Road  
Suite 500  
Arlington, Virginia 22203

HITRUST Baseline ID# 19134.05j1Organizational.5

## **VII. APPROVAL AUTHORITY**

- A. Review – Compliance Department
- B. Final Approval – Compliance Committee

## **VIII. ATTACHMENTS**

- A. Attachment A: Employee Confidentiality Agreement
- B. Attachment B: Business Associate Agreement (BAA)
- C. Attachment C: Mutual Nondisclosure Agreement (Mutual NDA)
- D. Attachment D: Unilateral Nondisclosure Agreement (Unilateral NDA)
- E. Attachment E: Board of Directors Protected Health Information Acknowledgement Form
- F. Attachment F: Advisory Board Protected Health Information Acknowledgement Form
- G. Attachment G: Texas Addendum
- H. Attachment H: Virginia Addendum

## IX. REFERENCES

A. None

## X. DISTRIBUTION

Distribute this procedure to all workforce members (associates, contractors, consultants, third-party vendors) who perform the processes outlined within this document.

## XI. EXCEPTION MANAGEMENT

Exceptions to this policy and/or procedure must be requested in writing to the IT Risk & Security Committee. The exception request will be evaluated in accordance with NCH's requirement for securing organizational and customer data

## XII. ENFORCEMENT

Any workforce member found to have violated any portion of this document may be subject to disciplinary action, up to and including termination.

## XIII. HITRUST REQUIREMENTS MAPPING

Domain	Baseline ID	Requirement Statement	Policy & Procedure Mapping
Domain 19	1901.06d1Organizational.1	The organization has formally appointed a qualified data protection officer, reporting to senior management, and who is directly and fully responsible for the privacy of covered information.	Policy: Page Number X, Bullet X ***** Procedure: Page Number X, Bullet X
Domain 19	1902.06d1Organizational.2	When required, consent is obtained before any PII (e.g., about a client/customer) is emailed, faxed, or communicated by telephone conversation, or otherwise disclosed to parties external to the organization.	Policy: Page Number X, Bullet X ***** Procedure: Page Number X, Bullet X
Domain 19	1905.06c1Organizational.6	The organization ensures PHI is safeguarded for a period of 50 years following the death of the individual.	Policy: Page Number X, Bullet X ***** Procedure: Page Number X, Bullet X

Domain	Baseline ID	Requirement Statement	Policy & Procedure Mapping
Domain 19	1906.06c1Organizational.2	The organization documents compliance with the notice requirements by retaining copies of the notices issued by the organization for a period of six years and, if applicable, any written acknowledgements of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgement.	Policy: Page Number X, Bullet X *****  Procedure: Page Number X, Bullet X
Domain 19	1907.06c1Organizational.3	The organization documents restrictions in writing and formally maintains such writing, or an electronic copy of such writing, as an organizational record for a period of six years.	Policy: Page Number X, Bullet X *****  Procedure: Page Number X, Bullet X
Domain 19	1908.06.c1Organizational.4	The organization documents and maintains records (PII) that are subject to access by individuals and the titles of the persons or office responsible for receiving and processing requests for access by individuals as organizational records for a period of six (6) years.	Policy: Page Number X, Bullet X *****  Procedure: Page Number X, Bullet X
Domain 19	1909.06c1Organizational.5	The organization documents and maintains accountings of disclosure as organizational records for a period of six years, including the information required for disclosure, the written accounting provided to the individual, and the titles of the persons or offices responsible for receiving and processing requests for an accounting.	Policy: Page Number X, Bullet X *****  Procedure: Page Number X, Bullet X
Domain 19	1911.06d1Organizational.13	Records with sensitive personal information are protected during transfer to organizations lawfully collecting such information.	Policy: Page Number X, Bullet X *****  Procedure: Page Number X, Bullet X
Domain 19	19134.05j1Organizational.5	The public has access to information about the organization's security and privacy activities and is able to communicate with its senior security official and senior privacy official.	Policy: Page Number X, Bullet X *****  Procedure: Page Number X, Bullet X

Domain	Baseline ID	Requirement Statement	Policy & Procedure Mapping
Domain 19	19140.06c1Organizational.1	The organization's formal policies and procedures, other critical records and disclosures of individuals' protected health information made are retained for a minimum of six years; and, for electronic health records, the organization retains records of disclosures to carry out treatment, payment and health care operations for a minimum of three years.	Policy: Page Number X, Bullet X ***** Procedure: Page Number X, Bullet X

## Attachment A: Employee Confidentiality Agreement



### Employee Confidentiality Agreement

For good consideration, and in consideration of my employment or continued employment by NCH Management Systems, Inc. ("Employer"), this Confidentiality Agreement is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Employee") and Employer.

1. **Confidential Information.** Employee recognizes that during the course of employment by NCH he/she may have access to confidential information. "Confidential Information" is any of the following:
  - a. Information (in any tangible or intangible form, including, without limitation, written or printed documents, visual demonstrations, computer data or records; audio or video recordings; e-mail; voice mail; oral communication and any other electronic media) regarding Employer, and any entity providing services to or receiving services from Employer, which is not generally known to the public including, but not limited to, the following: trade secrets; proprietary information, methodologies, techniques, technologies, and tools; business plans and strategies; customer lists and prospect information; product development and marketing programs, plans and strategies; inventions; provider agreements and negotiated rates; customer agreements and other contracts between the Employer and any third party; financial information; manuals, computer software and other computer-related materials developed or used by Employer; information relating to health care programs designed for clients of Employer; formulae, processes, designs, and other data and information;
  - b. Patient records, medical histories and other personal information concerning patients of Employer including, but not limited to, names, addresses, telephone or e-mail addresses, Social Security Numbers, and identification numbers; and
  - c. Personnel files or any other information concerning any employee of Employer.
2. **Use of Confidential Information.** Employee understands that Confidential Information shall only be used as follows. In each case, the phrase "disclosed to or discussed with" refers to communication in any form including, but not limited to, verbal, written, recorded and electronic, and use of social media (i.e., Internet-based websites and applications that allow users to create, exchange and share information, ideas, personal messages, and other content).
  - a. Confidential Information shall only to be used in the course of Employee's performance of his/her job responsibilities for the Employer, and shall not be disclosed to or discussed with any other employee or contractor of the Employer except as necessary for valid business purposes.
  - b. Confidential Information regarding the Employer or any entity providing services to or receiving services from Employer shall not be disclosed to or discussed with any person or entity outside the Employer unless authorized in advance by an appropriate officer of the Employer.
  - c. Confidential Information regarding any patient or employee of the Employer shall not be disclosed to or discussed with anyone outside the Employer



except as permitted or required by applicable law and by applicable Employer policies and procedures.

3. **HIPAA.** Employee understands that Employer and all of its employees are subject to the requirements of the Health Insurance Portability and Accountability Act (HIPAA). All employees are expected to comply with these requirements, as well as any other applicable Federal and State laws and regulations pertaining to the use and disclosure of sensitive patient information. Unauthorized use or disclosure of Protected Health Information (as defined by HIPAA) ("PHI") will result in performance improvement action, up to and including termination of employment. PHI includes, but is not limited to a patient's medical history, mental, or physical condition or treatment, as well as the patients and/or their family members records, test results, conversations, research records, billing information, and financial and insurance information.  
  
Employee further understands that HIPAA also addresses the security of PHI in connection with the use of portable and desktop computers, handheld computing or storage devices, pagers, phones, or any other device capable of receiving, transmitting or storing PHI. Employee is responsible for the security of the devices and confidentiality of the PHI within his/her scope of control. Employee will adhere to NCH policies and procedures related to security of PHI, and will immediately report to the appropriate Employer supervisor any unauthorized loss, disclosure (actual or potential), or use of PHI.
4. **Continuing Obligation.** Employee understands that the obligations set forth in paragraphs 1, 2 and 3 above apply during Employee's term of employment and continue thereafter.
5. **Required Disclosures.** Nothing in this agreement shall prohibit Employee from disclosing Confidential Information when required to do so pursuant to a valid subpoena, or as otherwise required by law. Employee agrees that in the event he/she receives a subpoena that would require the disclosure of any Confidential Information, Employee will immediately contact the Employer in order to allow the Employer the opportunity to intervene if necessary to protect against the inappropriate disclosure of Confidential Information.
6. **Termination of Employment.** Upon termination of employment, whether voluntary, involuntary, with or without cause, or by retirement, Employee shall personally deliver to Employer, all original copies and any reproductions of Confidential Information, including, but not limited to: records, reports, notebooks, proposals, lists, correspondence, documents, computer diskettes, notes, specifications, tape recordings or other electronic recordings, programs, or data or other materials or property of any nature pertaining to Employee's work with Employer. Employee shall not take or allow a third party to take any of the above listed property or any Confidential Information.
7. **Enforcement; Equitable Remedies.** The provisions of this Agreement shall be strictly enforced, both during and after Employee's employment by Employer. Employee understands that failure to comply with this any provision of this Agreement during his/her employment may result in performance improvement action, up to and



including termination of employment. Employee further understands that it would be difficult to measure the damages to Employer from any breach by Employee of this Agreement, that injury to Employer from any such breach would be impossible to calculate, and that money damages would therefore be an inadequate remedy for any such breach. Employee therefore agrees that in the event of an actual or threatened breach of this Agreement by Employee, either during or after his/her employment by Employer, the Employer, in addition to any of its other rights or remedies (including the right to money damages), shall be entitled to obtain injunctive and other equitable relief without bond or other security. Employee hereby consents to the issuance of such injunction and agrees that he/she will not assert, and that he/she hereby forever waives, the claim or defense that the Employer has an adequate remedy at law.

8. **General.** This Agreement is the final, complete and exclusive statement of the Agreement between Employee and Employer pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements. Employee is not relying upon any statement, representation or warranty outside those expressly set forth in this Agreement. This Agreement may only be supplemented, amended or modified by a mutual written agreement that is signed by both Employee and Employer.
9. **Severability.** If a court or arbitrator holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions shall not be affected.
10. **EMPLOYEE UNDERSTANDS AND AGREES THAT THIS AGREEMENT IS NOT A CONTRACT OF EMPLOYMENT.** With the exception of those employees who have a written employment agreement for a specified duration, Employee's employment is for an unspecified duration and constitutes "at-will" employment. Employer has and will continue to have the absolute and unconditional right to terminate Employee's employment for any reason or no reason, with or without cause or prior notice. Nothing in this Agreement shall obligate Employer to continue to retain Employee as an employee.

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## Attachment B: Business Associate Agreement (BAA)

### DOWNSTREAM SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

#### I. INTRODUCTION.

This Downstream Subcontractor Business Associate Agreement ("Agreement"), is made by and between NCH Management Systems, Inc, a California corporation, with its principal place of business at 675 Placentia Ave., Suite 300, Brea, California ("Business Associate") and \_\_\_\_\_ ("Business Associate Subcontractor" or "BA Subcontractor") and is effective as of \_\_\_\_\_, 202\_\_ ("Effective Date"). Business Associate and BA Subcontractor are each a Party to this Agreement and are referred to collectively as the "Parties."

#### II. RECITALS.

A. Pursuant to a separate written agreement ("Services Agreement"), Business Associate has engaged BA Subcontractor to provide certain services on its behalf and/or on behalf of one or more Covered Entities, as defined below. In connection with BA Subcontractor providing services to Business Associate, BA Subcontractor may, on behalf of Business Associate, create, receive, maintain, or transmit certain Protected Health Information ("PHI"), and BA Subcontractor may be considered a "business associate" of Business Associate.

B. Business Associate is contractually obligated to the Covered Entities to protect and secure any PHI that Business Associate receives from or on behalf of the Covered Entities in accordance with HIPAA, as defined herein.

C. Business Associate and BA Subcontractor intend to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), as amended by the Privacy and Security provisions set forth in Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-5 ("HITECH"), and the regulations promulgated thereunder, codified at 45 CFR Parts 160 and 164 (commonly known as the Privacy and Security Rules) (collectively, "HIPAA"), as well as other applicable federal and state laws.

D. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA including, but not limited to, 45 C.F.R. §§ 164.308(b), 164.314(a), 164.502(e) and 164.504(e).

**NOW THEREFORE**, in consideration of the mutual promises and conditions below and the exchange of information pursuant to this Agreement, the Parties agree as follows:

#### III. DEFINITIONS.

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA or the Services Agreement, as the case may be. "PHI" shall have the same meaning as the term in HIPAA, but for the purposes of this Agreement shall refer solely to PHI transmitted from or on behalf of Business Associate to BA Subcontractor or a Subcontractor of BA Subcontractor, or created by BA Subcontractor or its Subcontractor on behalf of Business Associate. PHI will include PHI in electronic form ("ePHI") unless specifically stated otherwise. "Subcontractor" shall have the same meaning as the term in HIPAA, and shall include any agent or other person who acts on behalf of an entity, provided that BA Subcontractor is not acting as an agent of Business Associate in its role as an independent contractor herein.

Any inconsistency in the definition of a capitalized term shall be resolved in favor of a meaning that permits compliance with HIPAA.

#### IV. PERMITTED USES AND DISCLOSURES OF PHI

Except as otherwise limited in this Agreement or the Services Agreement, BA Subcontractor may use or disclose the minimum necessary PHI required to accomplish the following:

A. General Use or Disclosure Under this Agreement. BA Subcontractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Business Associate consistent with the Services Agreement, provided that such use or disclosure would not violate HIPAA any applicable state law if done by Business Associate. Notwithstanding the above, BA Subcontractor may use and disclose PHI for the purposes identified in paragraphs (B), (C), and (E) of this Section IV.

B. Use and Disclosure for Administration/Legal Responsibilities. BA Subcontractor may disclose PHI for the proper management and administration of BA Subcontractor or to carry out the legal responsibilities of BA Subcontractor, provided that:

(1) The disclosures are Required by Law; or

(2) BA Subcontractor obtains reasonable assurances from the person to whom the PHI is disclosed that it shall remain confidential, shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and that the person agrees to promptly notify BA Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.

#### V. OBLIGATIONS AND ACTIVITIES OF SUBCONTRACTOR.

A. Scope of Uses and Disclosures. BA Subcontractor may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

B. Carrying Out Obligations under HIPAA. To the extent that BA Subcontractor, pursuant to this Agreement or the Services Agreement, is responsible for carrying out an obligation of Business Associate under HIPAA, BA Subcontractor shall comply with the requirements of HIPAA that apply to Business Associate in the performance of such obligation.

C. Appropriate Safeguards. Subcontractor shall use appropriate administrative, physical, and technical safeguards and, where applicable, comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this Agreement.

D. Reporting of Improper Use or Disclosure, Breach of Unsecured PHI, or Security Incident. BA Subcontractor shall report within five (5) days of discovery (as defined by 45 CFR 164.410(a)) to Business Associate any use, access, acquisition or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident or Breach of Unsecured PHI that is known to or reasonably should have been known to BA Subcontractor, provided however, that the Parties acknowledge and agree that this Section V(D) constitutes notice by BA Subcontractor to Business Associate of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Business Associate shall be required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast

attacks on firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. In the case of a Breach, BA Subcontractor shall provide Business Associate with the information required pursuant to 45 C.F.R. § 164.410(c).

E. Subcontractors. BA Subcontractor may not subcontract any services that require it to disclose PHI that it has received by or on behalf of Business Associate or the Covered Entity unless authorized in the Services Agreement or this Agreement. With such authorization, BA Subcontractor shall in accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of BA Subcontractor agrees in writing to the same restrictions, conditions, and requirements with respect to such information that apply to BA Subcontractor through this Agreement. If BA Subcontractor becomes aware of a pattern of activity or practice of a Subcontractor that would constitute a material breach or violation of the written agreement between BA Subcontractor and Subcontractor, BA Subcontractor shall (1) take reasonable steps to cure such breach or end the violation, as applicable, or terminate such written agreement with such Subcontractor, and (2) promptly report such material breach or violation by the Subcontractor to Business Associate in writing.

F. Access to PHI. To the extent that BA Subcontractor maintains PHI in a Designated Record Set, Subcontractor shall provide access to such PHI to Business Associate within five (5) business days of a request. If BA Subcontractor or its Subcontractors receives a request for access directly from an Individual, BA Subcontractor shall not provide such access but shall forward such request within three (3) business days to Business Associate, unless otherwise Required by Law

G. Amendment of PHI. To the extent that Subcontractor maintains PHI in a Designated Record Set, Subcontractor shall make any amendment(s) to such PHI within five (5) business days of a request. If BA Subcontractor or its Subcontractors receives a request for amendment directly from an Individual, BA Subcontractor shall not make such amendment but shall forward such request within three (3) business days to Business Associate, unless otherwise Required by Law

H. Accounting of Disclosures. BA Subcontractor shall document disclosures of PHI and information related to such disclosures as would be required for Business Associate to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR 164.528. BA Subcontractor shall provide to Business Associate an accounting of the disclosures of an Individual's PHI within five (5) business days of a request and as necessary to satisfy the Business Associate's and Covered Entity's obligations under 45 C.F.R. 164.528.

I. Access to Records. BA Subcontractor shall make its internal practices, books and records relating to the use and disclosure of PHI that is received from, or created or received by BA Subcontractor on behalf of, Business Associate available to Business Associate and the Secretary for purposes of determining compliance with HIPAA.

J. Mitigation. BA Subcontractor shall mitigate, to the extent practicable any harmful effect that is known to BA Subcontractor of a use or disclosure of PHI by BA Subcontractor (or by any other person to whom BA Subcontractor has disclosed PHI) in violation of the requirements of this Agreement.

K. Minimum Necessary. BA Subcontractor agrees that it shall comply with HIPAA's minimum necessary requirements. To the extent practicable, BA Subcontractor shall limit a request, use or disclosure of PHI to a Limited Data Set.

L. Documentation. All documentation that is required by this Agreement and HIPAA shall comply with retention requirements of federal and state regulations and accreditation, licensure and accepted standards of practice. Specifically, all Accounting of Disclosures and other documents containing PHI retained by BA Subcontractor shall be maintained for six (6) years from the date of creation or when it was last in effect, whichever is later. All documents containing medical records shall be retained in compliance with applicable state law. BA Subcontractor's obligations under this Section V(L) regarding indemnification will survive any expiration or termination of this Agreement.

M. De-identification Prohibited. Nothing in this Agreement shall permit the BA Subcontractor to de-identify PHI and use it for its own purposes, without the express written authorization from Business Associate or if specifically required or permitted under the Services Agreement.

N. Offshoring Prohibited. Nothing in this Agreement shall permit the BA Subcontractor to access, store, share, maintain, transmit, use, or disclose PHI in any form via any medium with any entity or person, including BA Subcontractor's employees and Subcontractors, beyond the boundaries and jurisdiction of the United States without the express written authorization from Business Associate.

O. Devices. If an Evolent laptop, smartphone, hardware or similar technology (collectively, "Devices") is issued by Business Associate to BA Subcontractor, BA Subcontractor shall comply with all relevant Business Associate policies and procedures applicable to the possession and use of Devices and the protection and security of data and PHI stored, transmitted, accessed or otherwise related to the use of the Devices and all applicable laws, including without limitation HIPAA. Business Associate may at any time and in its sole discretion terminate BA Subcontractor's access and possession of Devices including by disabling access and securing the Device. BA Subcontractor shall ensure that all Devices and associated software and applicable data are immediately returned to Business Associate upon termination of this Agreement or the Services Agreement or upon request by Business Associate.

## VI. TERM AND TERMINATION.

A. Term. The term of this Agreement shall commence as of the Effective Date of this Agreement, and shall continue in full force and effect for a period that is coterminous with the Services Agreement, but shall terminate as of the earliest occurrence of any of the following:

- (1) The Services Agreement is terminated;
- (2) This Agreement is terminated for cause as described in paragraph (B) below;
- (3) The Services Agreement is amended by written agreement of the Parties in a manner that the Parties mutually agree renders the provisions of this Agreement unnecessary; or
- (4) This Agreement is terminated under applicable federal, state, or local law.

B. Termination for Cause. Upon Business Associate's determination of a breach of a material term of this Agreement by BA Subcontractor, Business Associate shall provide BA Subcontractor written notice of that breach and afford BA Subcontractor an opportunity to cure the breach; provided, however, that if BA Subcontractor fails to cure the breach within five (5) days of receipt of such notice, Business Associate may terminate this Agreement. BA Subcontractor agrees and acknowledges that Business Associate has the right, in its sole discretion, to report the breach to the Secretary.

C. Effect of Termination

(1) Except as provided in paragraph (2) of this Subsection, upon termination of this Agreement for any reason, BA Subcontractor shall return or destroy all PHI received from, or created, received, maintained, or transmitted by BA Subcontractor on behalf of, Business Associate that BA Subcontractor still maintains in any form, as well as the documentation required by 45 C.F.R. § 164.530(j)(1) (all of which shall be collectively referred to as PHI for purposes of this Section VI.C.). BA Subcontractor shall retain no copies of such PHI.

(2) If it is not feasible for BA Subcontractor to return or destroy all PHI, BA Subcontractor shall notify Business Associate in writing the reasons such return or destruction is infeasible. Upon Business Associate's determination that it is infeasible for BA Subcontractor to return or destroy the PHI, BA Subcontractor shall extend the protections of this Agreement to such PHI and limit any further use or disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as BA Subcontractor maintains such PHI.

(3) These provisions shall apply to PHI that is in the possession of Subcontractors of BA Subcontractor.

(4) Any PHI that BA Subcontractor destroys shall be destroyed in accordance with HIPAA.

**VII. INSURANCE AND INDEMNIFICATION.**

A. Indemnification. BA Subcontractor agrees to indemnify and hold harmless Business Associate from direct losses and damages relating to third party claims suffered by Business Associate as a result of BA Subcontractor's breach of its obligations under this Agreement. Under no circumstances, however, will BA Subcontractor be liable for any indirect or consequential damages of any kind, including lost profits (whether or not BA Subcontractor has been advised of such loss or damage) arising in any way in connection with this Agreement. The Parties' obligations under this Section VII(A) regarding indemnification will survive any expiration or termination of this Agreement.

B. Breach Notification. BA Subcontractor agrees that if it fails to adhere to any of the provisions set forth in this Agreement or the Services Agreement and, as a result, PHI or other confidential information is unlawfully accessed, used, or disclosed, Subcontractor BA shall pay all (or its proportionate share of) costs associated with any notification to affected individuals that is Required By Law, including any and all (or its proportionate share of) fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting.

**VIII. MISCELLANEOUS.**

A. Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended from time to time and for which compliance is required

B. Amendment; No Waiver. Upon the effective date of any federal statute amending or expanding HIPAA, any guidance or temporary, interim final or final regulations promulgated under HIPAA, that are applicable to this Agreement, this Agreement shall be automatically amended, such that the obligations imposed on Business Associate and BA Subcontractor shall remain in compliance with such requirements,

unless the Parties agree by mutual consent to further negotiate the amendments. Except as provided otherwise in this paragraph (B), no waiver, change, modification, or amendment of any provision of this Agreement shall be made unless it is in writing and is signed by the Parties. The failure of either Party at any time to insist upon strict performance of any condition, promise, agreement, or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same condition, promise, agreement, or understanding at a future time.

C. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with HIPAA or applicable state privacy laws. The titles and headings set forth at the beginning of each section hereof are inserted for convenience of reference only and shall in no way be construed as a part of this Agreement or as a limitation on the scope of the particular provision to which it refers. In the event of an inconsistency between the provisions of the Services Agreement and this Agreement concerning the use or disclosure of PHI, the terms of this Agreement shall prevail unless the Parties mutually agree that the applicable terms of the Services Agreement shall be more protective of PHI. The provisions of the Services Agreement will remain in full force and effect and are amended by this Agreement only to the extent necessary to effectuate the provisions set forth herein.

D. Entire Agreement. This Agreement, along with the applicable provisions in the Services Agreement, sets forth the entire understanding between the Parties and supersedes any previous or contemporaneous understandings, commitments, representations, warranties, or agreements, written or oral, regarding the subject matter hereof. No representations, agreements, or understandings of any kind, either written or oral, except as set forth or incorporated by reference into this Agreement, have been relied upon in entering into this Agreement, nor shall any such representations, agreements, or understandings be binding upon the Parties unless expressly contained herein or therein.

E. Relationship of Parties. The Parties are independent contractors. None of the provisions of this Agreement are intended to create, nor shall they be interpreted or construed to create, any relationship between Business Associate and BA Subcontractor other than that of independent contractors. Except as otherwise expressly set forth herein, neither Party, nor any of its representatives, shall be deemed to be the agent, employee, or representative of the other Party.

F. No Third-Party Beneficiaries. This Agreement is between the Parties. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, any rights, remedies, obligations, or liabilities whatsoever upon any person other than Business Associate and BA Subcontractor and any respective successors and assigns.

G. Invalid or Unenforceable Provision. The provisions of this Agreement shall be severable. The invalidity or unenforceability of any particular provision or portion of such provision of this Agreement shall be construed, in all respects, as if such invalid or unenforceable provision or portion of such provision had been omitted, and shall not affect the validity and enforceability of the other provisions hereof or portions of that provision.

H. Nonassignability, Benefits and Burdens. Neither Party may assign its rights, or delegate its duties or obligations, under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors.

I. Notices. All notices hereunder shall be in writing, and either delivered by hand, or sent by mail, or delivered in such other manner as the parties may agree upon, to the following:

**To BA Subcontractor:**

**To Business Associate:** NCH Management Systems, Inc.  
Attn: General Counsel  
800 N. Glebe Road, Suite 500  
Arlington, VA 22203

Each party reserves the right to change the address for receiving notice during the term of this Agreement upon written notice to the other parties.

J. Counterparts. This Agreement may be executed in separate counterparts, none of which need contain the signatures of both Parties, and each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized officers.

**SUBCONTRACTOR**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUSINESS ASSOCIATE**

NCH Management Systems, Inc.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Attachment C: Mutual Nondisclosure Agreement (Mutual NDA)

CONFIDENTIAL

### MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement"), effective as of [DATE] ("Effective Date") is by and between NCH Management Systems, Inc., a California corporation with its principal office in 675 Placentia Ave., Suite 300, Brea, California ("NCH") and [COMPANY NAME], with offices at [ADDRESS] ("Company") (each, individually, a "Party" and, collectively, the "Parties").

The Parties will be engaging in discussions for the sole purpose of evaluating a potential transaction in which [CHOOSE: Company would provide products or services and/or license technology to NCH OR NCH would provide products or services and/or license technology to Company] (the "Purpose"). In connection with these discussions, each Party (when acting in such capacity, "Disclosing Party") may make certain of its Confidential Information (as defined below) available to the other Party (when acting in such capacity, "Receiving Party"). In order to protect such Confidential Information, the Parties, intending to be legally bound, hereby agree as follows:

**1. Description of Confidential Information.** In connection with the Purpose, Disclosing Party may deliver or make available to Receiving Party certain confidential or proprietary information, including financial information, technical data, business plans, customer information, pricing information, sales and marketing information, information relating to its operating systems, software, systems interfaces, operating processes, trade secrets and other information and documentation relating to the business and affairs of Disclosing Party or its affiliates that is either: (i) marked as "Confidential" or "Proprietary," (ii) described as such to the Receiving Party in writing either at the time of the disclosure or promptly thereafter, or (iii) disclosed in circumstances or of such a nature that would lead a reasonable person to recognize its confidential character, whether electronic, visual, or written (collectively, "Confidential Information"). Confidential Information includes all analyses, compilations, business or technical information and other materials prepared by Receiving Party, or any of its respective directors, officers, employees, consultants, attorneys and other representatives and agents ("Representatives"), to the extent containing or based on Confidential Information of Disclosing Party. Confidential Information also includes the existence of this Agreement, the terms and conditions hereof and the fact that each Party is receiving or gaining access to the other Party's Confidential Information.

Notwithstanding anything to the contrary above, Confidential Information does not include any information which (a) is or becomes generally available to the public other than as a result of a breach of this Agreement, (b) was in possession of Receiving Party or its Representatives prior to its delivery to Receiving Party by Disclosing Party, as evidenced by Receiving Party's written records, (c) becomes available to Receiving Party on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis, or (d) was or is independently developed by or for Receiving Party without breaching any obligations under this Agreement and without the use of any of Disclosing Party's Confidential Information, as evidenced by Receiving Party's written records.

**2. Disclosure Period.** This Agreement pertains to Confidential Information that is disclosed during the period commencing on the Effective Date and ending on the earliest of (a) termination of discussions regarding the Purpose and delivery of written notice thereof by either Party specifically referencing this Agreement, or (b) execution of a definitive agreement by the Parties which then governs the treatment of confidential information disclosed thereafter ("Disclosure Period").

**3. Term.** This Agreement, other than Receiving Party's duty to hold Confidential Information in confidence, shall expire three (3) years after the end of the Disclosure Period; for clarity, Receiving Party's obligations under this Agreement to hold Confidential Information in confidence shall continue indefinitely or the maximum time permitted by applicable law.

**4. Restricted Use; Limited Internal Disclosure; Degree of Care.** Receiving Party shall not use Disclosing Party's Confidential Information for any purpose other than the Purpose, and shall not disclose, disseminate, publish or communicate any of Disclosing Party's Confidential Information to any individual, entity or other third

party without the prior written consent of Disclosing Party, except to Receiving Party's Representatives who (a) have a need to know such Confidential Information in connection with the Purpose, and (b) are bound by confidentiality obligations no less restrictive than Receiving Party's obligations hereunder. Receiving Party shall be responsible and liable to Disclosing Party for any use or disclosure of Confidential Information by it or its Representatives in breach of this Agreement. Receiving Party agrees to use the same degree of care to protect Disclosing Party's Confidential Information that it uses to protect its own confidential information of a like nature from unauthorized disclosure, but in no case less than a reasonable degree of care.

**5. Required Disclosure.** Notwithstanding anything in this Agreement to the contrary, Receiving Party and its Representatives may disclose Confidential Information as required by court order, duly authorized subpoena, governmental authority or applicable law, as long as Receiving Party (a) provides prompt notice of such requirement to Disclosing Party of such request for disclosure, (b) takes commercially reasonable steps to allow Disclosing Party an opportunity to object to such disclosure and to seek a protective order for such Confidential Information, (c) reasonably cooperates with Disclosing Party in such efforts, if any, to limit the nature and scope of the disclosure, and (d) discloses only such Confidential Information as Receiving Party is legally required to disclose.

**6. Return or Destruction of Confidential Information.** If either Party terminates discussions regarding the Purpose pursuant to clause (a) of Section 2, each Party shall promptly return or destroy all tangible items in its possession containing Confidential Information of the other Party and delete all electronic media containing such Confidential Information. Upon request by Disclosing Party, Receiving Party shall certify to Disclosing Party in writing that it has complied with the obligations of this Section. Notwithstanding the foregoing, Receiving Party (i) may maintain a secure file containing a single copy of all items returned to Disclosing Party and/or a list of items destroyed to demonstrate compliance with law, regulatory authority, or other applicable judicial or governmental order, or to comply with a bona fide document retention policy; and (ii) shall not be obligated to destroy electronically-stored Confidential Information to the extent that it is contained in an archived computer system backup in accordance with Receiving Party's generally applicable security and/or disaster recovery procedures.

**7. No Obligation for Transaction.** Nothing herein shall obligate either Party to enter into any transaction relating to the Purpose, and no such obligation shall arise unless and until a definitive agreement is executed by the Parties relating to any such transaction. Each Party reserves the right, in its sole discretion, not to proceed with a transaction relating to the Purpose and to terminate discussions and negotiations with the other Party relating to any such transaction at any time.

**8. Ownership.** Receiving Party acknowledges and agrees that this Agreement does not constitute any license or other conveyance of any rights (including, without limitation, any intellectual property rights) with respect to any of Disclosing Party's Confidential Information and that, as between

the Parties, such Confidential Information is and shall remain the sole property of Disclosing Party. Receiving Party shall not, and shall cause its Representatives not to, remove any copyright, confidentiality or proprietary rights notice attached to or included in any of Disclosing Party's Confidential Information and shall reproduce all such notices on any copies thereof.

**9. Business.** Each Party understands and agrees that the other may be in a business similar to or the same and may already have developed, in the process of developing, or plan to develop, products, services or information similar to those owned or developed by the other. Nothing herein shall be construed (a) to affect or limit either Party's present and future business activities of any nature, including business activities which could be competitive with the other Party, or (b) as a representation that Receiving Party does not or will not have independently developed or legally received information that may be the same or similar to Disclosing Party's Confidential Information, provided that Receiving Party does not violate any of its obligations under this Agreement in connection with any such development or acquisition.

**10. Warranty.** Each Disclosing Party warrants that it has the right to disclose its Confidential Information under this Agreement. DISCLOSING PARTY PROVIDES THE CONFIDENTIAL INFORMATION "AS IS", AND, EXCEPT FOR THE FOREGOING, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, COMPLETENESS, OR FITNESS FOR ANY PARTICULAR PURPOSE. Disclosing Party shall not have any liability whatsoever to Receiving Party relating to or resulting from Receiving Party's use of, or reliance on, any of Disclosing Party's Confidential Information or any error therein or omissions therefrom.

**11. Injunctive Relief.** Receiving Party acknowledges that disclosure or use of Confidential Information in breach of this Agreement may cause irreparable harm to Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. Receiving Party therefore agrees that Disclosing Party will have the right, in addition to its other rights

and remedies, at law or in equity, to seek injunctive relief for any breach or threatened breach of this Agreement.

**12. Assignment.** Neither Party may assign this Agreement to any third party without the prior written consent of the other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**13. Miscellaneous.** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous discussions, agreements and understandings (whether written or oral) between the Parties concerning the subject matter hereof. All additions or modifications to this Agreement shall be made in writing and shall be executed by the Parties. This Agreement shall not be deemed to create any agency, partnership or joint venture relationship between the Parties. The rights and obligations of the Parties under this Agreement shall be governed by the laws of the State of California, except for its conflict of law principles. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed to reflect the original intentions of the Parties in accordance with applicable law or, failing that, severed from this Agreement, and the remaining terms and conditions of this Agreement shall remain in full force and effect. The failure of either Party to enforce strict performance by the other Party of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. Any notice or other communication made under this Agreement shall be provided in writing and shall be transmitted by personal delivery, nationally recognized overnight courier service, or registered or certified mail, return receipt requested, addressed to a Party at the address stated in the first paragraph of this Agreement (or such other address as is provided by like notice). This Agreement may be executed in counterparts and delivered by facsimile transmission, each of which shall be deemed an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the Effective Date.

**[COMPANY NAME]**

By: \_\_\_\_\_

Name : \_\_\_\_\_

Title: \_\_\_\_\_

NCH MANAGEMENT SYSTEMS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Attachment D: Unilateral Nondisclosure Agreement (Unilateral NDA)

CONFIDENTIAL

### NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement"), effective as of \_\_\_\_\_, 2020 ("Effective Date") is by and between NCH Management Systems, Inc., a California corporation with its principal office in 675 Placentia Ave., Suite 300, Brea, California ("New Century Health") and \_\_\_\_\_ ("Company") (each, individually, a "Party" and, collectively, the "Parties").

The Parties will be engaging in discussions where Evolent would provide certain Confidential Information to Company (the "Purpose"). In connection with these discussions, Evolent (when acting in such capacity, "Discloser") may make certain of its Confidential Information (as defined below) available to Company (when acting in such capacity, "Recipient"). In order to protect such Confidential Information, the Parties, intending to be legally bound, hereby agree as follows:

**1. Description of Confidential Information.** In connection with the Purpose, Discloser may deliver or make available to Recipient certain confidential or proprietary information, including financial information, technical data, business plans, customer information, pricing information, sales and marketing information, information relating to its operating systems, software, systems interfaces, operating processes, trade secrets and other information and documentation relating to the business and affairs of Discloser or its affiliates that is either: (i) marked as "Confidential" or "Proprietary," (ii) described as such to the Recipient in writing either at the time of the disclosure or promptly thereafter, or (iii) disclosed in circumstances or of such a nature that would lead a reasonable person to recognize its confidential character, whether electronic, visual, or written (collectively, "Confidential Information"). Confidential Information includes all analyses, compilations, business or technical information and other materials prepared by Recipient, or any of its respective directors, officers, employees, consultants, attorneys and other representatives and agents ("Representatives"), to the extent containing or based on Confidential Information of Discloser. Confidential Information also includes the existence of this Agreement, the terms and conditions hereof and the fact that each Party is receiving or gaining access to the other Party's Confidential Information.

Notwithstanding anything to the contrary above, Confidential Information does not include any information which (a) is or becomes generally available to the public other than as a result of a breach of this Agreement, (b) was in possession of Recipient or its Representatives prior to its delivery to Recipient by Discloser, as evidenced by Recipient's written records, (c) becomes available to Recipient on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis, or (d) was or is independently developed by or for Recipient without breaching any obligations under this Agreement and without the use of any of Discloser's Confidential Information, as evidenced by Recipient's written records.

**2. Term.** This Agreement, other than Recipient's duty to hold Confidential Information in confidence, shall expire three (3) years after the end of the Disclosure Period; for clarity, Recipient's obligations under this Agreement to hold Confidential Information in confidence shall continue indefinitely or the maximum time permitted by applicable law.

**3. Restricted Use; Limited Internal Disclosure; Degree of Care.** Recipient shall not use Discloser's Confidential Information for any purpose other than the Purpose, and shall not disclose, disseminate, publish or communicate any of Discloser's Confidential Information to any individual, entity or other third party without the prior written consent of Discloser, except to Recipient's Representatives who (a) have a need to know such Confidential Information in connection with the Purpose, and (b) are bound by confidentiality obligations no less restrictive than Recipient's obligations hereunder. Recipient shall be

responsible and liable to Discloser for any use or disclosure of Confidential Information by it or its Representatives in breach of this Agreement. Recipient agrees to use the same degree of care to protect Discloser's Confidential Information that it uses to protect its own confidential information of a like nature from unauthorized disclosure, but in no case less than a reasonable degree of care. When the Confidential Information includes the Disclosing Party's member, subscriber or patient specific information or protected health information and/or individually identifiable personal information, the Receiving Party will only use such Confidential Information as directed by the Disclosing Party and in accordance with all applicable state and federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the applicable requirements of HIPAA's implementing regulations issued by the U.S. Department of Health and Human Services, Title 45 of the Code of Federal Regulations Parts 160-164 ("HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations issued thereunder, as each may be amended from time to time. Moreover, in the event the Parties may have mutually executed a Business Associate Agreement, with respect to the Confidential Information, the Receiving Party agrees to abide by the terms and conditions set forth in that certain Business Associate Agreement, if any.

**4. Required Disclosure.** Notwithstanding anything in this Agreement to the contrary, Recipient and its Representatives may disclose Confidential Information as required by court order, duly authorized subpoena, governmental authority or applicable law, as long as Recipient (a) provides prompt notice of such requirement to Discloser of such request for disclosure, (b) takes commercially reasonable steps to allow Discloser an opportunity to object to such disclosure and to seek a protective order for such Confidential Information, (c) reasonably cooperates with Discloser in such efforts, if any, to limit the nature and scope of the disclosure, and (d) discloses only such Confidential Information as Recipient is legally required to disclose.

**5. Return or Destruction of Confidential Information.** If either Party terminates discussions regarding the Purpose pursuant to clause (a) of Section 2, each Party shall promptly return or destroy all tangible items in its possession containing Confidential Information of the other Party and delete all electronic media containing such Confidential Information. Upon request by Discloser, Recipient shall certify to Discloser in writing that it has complied with the obligations of this Section. For the sole purpose of evidencing compliance with this Agreement, Recipient may maintain a secure file containing a single copy of all items returned to Discloser and/or a list of items destroyed.

**6. Ownership.** Recipient acknowledges and agrees that this Agreement does not constitute any license or other conveyance of any rights (including, without limitation, any intellectual property rights) with respect to any of Discloser's Confidential Information and that, as between the Parties, such Confidential Information is and shall remain the sole property of Discloser.

Recipient shall not, and shall cause its Representatives not to, remove any copyright, confidentiality or proprietary rights notice attached to or included in any of Discloser's Confidential Information and shall reproduce all such notices on any copies thereof.

**7. Warranty.** Each Discloser warrants that it has the right to disclose its Confidential Information under this Agreement. DISCLOSER PROVIDES THE CONFIDENTIAL INFORMATION "AS IS", AND, EXCEPT FOR THE FOREGOING, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, COMPLETENESS, OR FITNESS FOR ANY PARTICULAR PURPOSE. Discloser shall not have any liability whatsoever to Recipient relating to or resulting from Recipient's use of, or reliance on, any of Discloser's Confidential Information or any error therein or omissions therefrom.

**8. Injunctive Relief.** Recipient acknowledges that disclosure or use of Confidential Information in breach of this Agreement may cause irreparable harm to Discloser for which monetary damages may be difficult to ascertain or an inadequate remedy. Recipient therefore agrees that Discloser will have the right, in addition to its other rights and remedies, at law or in equity, to seek injunctive relief for any breach or threatened breach of this Agreement.

**9. Assignment.** Neither Party may assign this Agreement to any third party without the prior written consent of the other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**10. Miscellaneous.** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous discussions, agreements and understandings (whether written or oral) between the Parties concerning the subject matter hereof. All additions or modifications to this Agreement shall be made in writing and shall be executed by the Parties. This Agreement shall not be deemed to create any agency, partnership or joint venture relationship between the Parties. The rights and obligations of the Parties under this Agreement shall be governed by the laws of the State of Delaware, except for its conflict of law principles. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed to reflect the original intentions of the Parties in accordance with applicable law or, failing that, severed from this Agreement, and the remaining terms and conditions of this Agreement shall remain in full force and effect. The failure of either Party to enforce strict performance by the other Party of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. Any notice or other communication made under this Agreement shall be provided in writing and shall be transmitted by personal delivery, nationally recognized overnight courier service, or registered or certified mail, return receipt requested, addressed to a Party at the address stated in the first paragraph of this Agreement (or such other address as is provided by like notice). This Agreement may be executed in counterparts and delivered by facsimile transmission, each of which shall be deemed an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

<p><b>[COMPANY NAME]</b></p> <p>By: _____</p> <p>Name : _____</p> <p>Title: _____</p>	<p><b>NCH Management Systems, Inc.</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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## Attachment E: Board of Directors Protected Health Information Acknowledgement Form



### New Century Health

#### BOARD OF DIRECTORS PROTECTED HEALTH INFORMATION ACKNOWLEDGEMENT FORM

This Acknowledgement Form is made and entered into by the below named Director, who is a member of the Board of Directors of NCH Management Systems, Inc. ("New Century Health"), on the date indicated in the signature space at the end of this form.

In connection with the Director's service on the Board, the Director may have access to certain sensitive personal information that is in New Century Health's possession. Director therefore acknowledges his/her understanding of the following:

- The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is an important federal law that governs how an individual's Protected Health Information ("PHI") is collected, stored, used and disclosed.
- PHI refers to individually identifiable health information, defined by HIPAA as that health information which can be linked to a particular person by means including, but not limited to, names, social security numbers, addresses, phone numbers and birth dates. "Health information" is defined broadly to include:
  - The individual's past, present or future physical or mental health or condition;
  - The provision of health care to the individual; or
  - The past, present, or future payment for the provision of health care to the individual.
- HIPAA applies to PHI in any form, whether verbal, paper or electronic. It is intended to protect the confidentiality, integrity, and availability of PHI when it is stored, maintained, or transmitted in any way, including servers, desktop computers, laptops, tablets, handheld devices, pagers, phones, or any other device capable of receiving, storing or transmitting PHI.
- Access to PHI must be limited to those persons who require access to the PHI in order to perform functions that are permitted under HIPAA, most notably (i) treatment, payment or health care operations, or (ii) as authorized in writing by the individual to whom the PHI relates. In addition, the amount and type of information to which those persons have access must be limited to the minimum amount necessary to perform the permitted function(s).
- New Century Health is subject to HIPAA as both the recipient and generator of PHI. Accordingly, New Century Health has adopted policies and procedures in order to comply with the requirements of HIPAA and similar state privacy laws.
- Every New Century Health Director must maintain the confidentiality of all PHI that may be disclosed to him/her regarding any individual receiving services from New Century Health. If any Director has questions regarding this obligation, New Century Health's Chief Executive Officer or Chief Compliance Officer must be consulted.

The below named Director acknowledges that he/she understands and accepts the foregoing obligations.

\_\_\_\_\_  
Director Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director Signature



## Attachment F: Advisory Board Protected Health Information Acknowledgement Form



### New Century Health

#### {Insert Year} {Insert Specialty} SCIENTIFIC ADVISORY BOARD PROTECTED HEALTH INFORMATION ACKNOWLEDGEMENT FORM

This Acknowledgement Form is made and entered into by the below named Consultant, who is a member of the {Insert Specialty} Scientific Advisory Board ("Advisory Board") of NCH Management Systems, Inc. ("New Century Health"), on the date indicated in the signature space at the end of this form.

In connection with the Consultant's service on the Advisory Board, the Consultant may have access to certain sensitive personal information that is in New Century Health's possession. Consultant therefore acknowledges his/her understanding of the following:

- The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is an important federal law that governs how an individual's Protected Health Information ("PHI") is collected, stored, used and disclosed.
- PHI refers to individually identifiable health information, defined by HIPAA as that health information which can be linked to a particular person by means including, but not limited to, names, social security numbers, addresses, phone numbers and birth dates. "Health information" is defined broadly to include:
  - The individual's past, present or future physical or mental health or condition;
  - The provision of health care to the individual; or
  - The past, present, or future payment for the provision of health care to the individual.
- HIPAA applies to PHI in any form, whether verbal, paper or electronic. It is intended to protect the confidentiality, integrity, and availability of PHI when it is stored, maintained, or transmitted in any way, including servers, desktop computers, laptops, tablets, handheld devices, pagers, phones, or any other device capable of receiving, storing or transmitting PHI.
- Access to PHI must be limited to those persons who require access to the PHI in order to perform functions that are permitted under HIPAA, most notably (i) treatment, payment or health care operations, or (ii) as authorized in writing by the individual to whom the PHI relates. In addition, the amount and type of information to which those persons have access must be limited to the minimum amount necessary to perform the permitted function(s).
- New Century Health is subject to HIPAA as both the recipient and generator of PHI. Accordingly, New Century Health has adopted policies and procedures in order to comply with the requirements of HIPAA and similar state privacy laws.
- Every New Century Health Advisory Board Consultant must maintain the confidentiality of all PHI that may be disclosed to him/her regarding any individual receiving services from New Century Health. If any Consultant has questions regarding this obligation, New Century Health's Chief Executive Officer or Compliance Officer must be consulted by contacting New Century Health at (888) 999-7713 or [compliance@newcenturyhealth.com](mailto:compliance@newcenturyhealth.com).

The below named Consultant acknowledges that he/she understands and accepts the foregoing obligations.

\_\_\_\_\_  
Consultant Name

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone



## Attachment G: Texas Addendum

STATE/FEDERAL REQUIREMENTS: TAC 19.173 (a)(b), TIC 4201.207 (a-b TIC 4201.554, TIC 4201.555 (a-c), TIC 4201.556 (a-b), TIC 4201.55, TIC 4201.558

### VI. POLICY

This policy applies to all employees, committee members, board members, temporary staff, independent contractors, vendors, auditors and other individuals and companies doing business with and having access to such information.

New Century Health expressly prohibits unauthorized or indiscriminate access, use, modification or disclosure of Confidential Information because these actions could cause harm to New Century Health, its clients, members, or providers. Any such action will subject an employee or independent contractor to disciplinary action, up to and including immediate dismissal. Additionally, these acts may also be a violation of federal, state, or local laws, possibly subjecting an employee/professional contractor and New Century Health to civil and/or criminal liability.

Examples of Confidential Information protected by this policy include, but are not limited to, any and all information pertaining to:

- Patient data (including but not limited to health and medical data, personal information, demographic data, and financial data);
- Provider data
- Processes, protocols, pricing methodologies and strategies,
- Software, systems, codes, applications, networks and data structures;
- Product development and test results, patents pending, research data and algorithms, scientific data, formulae and prototypes;
- Pending projects and proposals, marketing plans and lists, and surveys, sales tactics;
- Unpublished financial information, profitability information, forms, transaction documents, budgets;
- Client lists, identities, and agreements;
- Human Resources information and compensation rates.

Patient specific information obtained during the process of utilization review will be:

- Kept confidential in accordance with applicable federal and state laws
- Used for purposes of utilization review and quality assurance
- Shared only with those agencies that have the authority to receive such information
- Summary data shall not be considered confidential if it does not provide sufficient information to allow for identification of individual patient

In dealing with New Century Health's Confidential Information, these principles shall be followed:

- a. New Century Health will not disclose or publish individual medical records, personal information, or other confidential information about a patient obtained in the performance of utilization review without the prior written consent of the patient or as otherwise required by law. Personal information shall include at a minimum, name, address, phone number, social security number, and financial information. If such authorization is submitted by anyone other than the individual who is the subject of the personal or confidential information requested, such authorization must:
  - i. be dated; and
  - ii. contain the signature of the individual who is the subject of the personal or confidential information requested. The signature must have been obtained one year or less prior to the date the disclosure is sought, or the authorization is invalid. [TAC 19.173 (b)]
- b. Health Information – Use of medical records and other information received from New Century Health's clients and/or their providers or members is permitted for business purposes only. New Century Health may provide confidential information to a third party under contract or affiliated with New Century Health for the sole purpose of performing or assisting with utilization review.

Information provided to third parties shall remain confidential TAC 19.173 (b) Data confidentiality and integrity shall be safeguarded at all times including instances when health information is transmitted through electronic communications systems. In the absence of encryption software, all such data must be faxed by secure transmission. All of New Century Health's privacy and security policies shall be adhered to when handling these data.

- c. Access to recorded information - If an individual submits a written request for access to recorded personal information about the individual, New Century Health shall within 10 business days from the date such request is received: [TIC 4201.555 (a-c)]
  - i. inform the individual submitting the request of the nature and substance of the recorded personal information in writing; and
  - ii. permit the individual to see and copy, in person, the recorded personal information pertaining to the individual or to obtain a copy of the recorded personal information by mail, at the discretion of the individual, unless the recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing.
  - iii. not charge more than ten cents per page and not include any costs that are otherwise recouped as part of the charge for utilization review. TAC 19.1713 (a)(4)
- d. Unless precluded or modified by contract, New Century Health shall reimburse a health care provider for the reasonable costs of providing medical information in writing, including the costs of copying and transmitting requested patient records or other documents. A health care provider's charges for providing medical information to a utilization review agent may not:
  - i. exceed the cost of copying records regarding a workers' compensation claim as set by rules adopted by the commissioner of workers' compensation; or
  - ii. include any costs otherwise recouped as part of the charges for health care. (TIC 4201.207 (a-b))
- e. Provider Data – Any provider data shall be protected and maintained as confidential. Its confidentiality and integrity shall be safeguarded. When provider information is transmitted through electronic means it shall be encrypted for e-mail or sent through a secure facsimile. New Century Health will not publish data that identifies a particular physician or health care provider, including any quality review studies or performance tracking data without prior written notice to the involved health care provider. This prohibition does not apply to internal systems or reports used by New Century Health. TIC 421.556(a)(b), TIC 4201.557
- f. “Need-to-Know” – Any Confidential Information may be discussed with others only on a need-to-know basis. This information must not be used by you for personal purposes or be disclosed to anyone outside the Company, whether directly or indirectly, including family members except as is strictly required by your employment. This obligation exists both during and after your employment.
- g. Confidentiality Agreements – On occasion, when it becomes necessary to share confidential information outside New Century Health for legitimate business purposes, this information shall be released only after obtaining a signed nondisclosure agreement (NDA).

Information released to these third parties must be limited to the topics directly related to the involved project or business relationship, and the disclosure must be approved in advance by New Century Health.

In some instances, before discussions can be commenced, third parties may require that employees at New Century Health sign the third party's non-disclosure agreements (NDAs). Third-party NDAs must be forwarded to New Century Health legal counsel for review prior to signing. Upon approval from legal counsel, authority to execute the NDA is VP level and above. Original signed NDAs must be sent to the New Century Health Compliance Department. If you are unsure, check with the Compliance department with questions before proceeding.

- h. Inadvertent Disclosures – All employees and professional contractors must be careful not to make inadvertent disclosures of New Century Health Confidential Information in either social

conversations or in normal business relations with New Century Health's clients. Under circumstances when a New Century Health employee independent contractor comes into the possession of confidential information inadvertently or without a business need to know, the employee/professional contractor shall safeguard such information and shall not disclose this information within or outside New Century Health.

- i. Documents in the custody of the utilization review agent that contain confidential patient information or physician, or health care provider financial data shall be destroyed by a method which induces complete destruction of the information when the agent determines the information is no longer needed. TIC 4201.558
- j. All patient, physician, and health care provider data shall be maintained by the utilization review agent in a confidential manner which prevents unauthorized disclosure to third parties. Nothing in this article shall be construed to allow a utilization review agent to take actions that violate a state or federal statute or regulation concerning confidentiality of patient records. (TAC 19.1714 (h))
- k. To assure confidentiality, a utilization review agent must, when contacting a physician's office or hospital, provide its certification number, the caller's name, and professional qualifications to the provider's named utilization review representative in the health care provider's office. (TAC 19.1713 (a))
- l. Upon request by the provider, New Century Health shall present written documentation that it is acting as an agent of the payor for the relevant patient. [TAC 19.173 (a)(1)]
- m. New Century Health's procedures shall specify that specific information exchanged for the purpose of conducting reviews will be considered confidential, be used by the private review agent solely for the purposes of utilization review and shared by the utilization review agent with only those third parties who have authority to receive such information, such as the claim administrator. New Century Health shall specify that procedures are in place to assure confidentiality and that New Century Health agrees to abide by any federal and state laws governing the issue of confidentiality. Summary data which does not provide sufficient information to allow identification of individual patients or providers need not be considered confidential. [TAC 19.1713 (b)]
- n. Medical records and patient specific information shall be maintained by the utilization review agent in a secure area with access limited to essential personnel only. [TAC 19.1713 (a)(2)]
- o. Information generated and obtained by the utilization review agents in the course of utilization review shall be retained for at least four years. [TAC 19.1713 (a)(3)]

Notwithstanding the provisions of this policy, New Century Health shall provide to the commissioner on request individual medical records or other confidential information for determination of compliance with this subchapter. The information is confidential and privileged and is not subject to the open records law, Government Code, Chapter 552, or to subpoena, except to the extent necessary to enable the commissioner to enforce this subchapter. [TIC 4201.554]

Failure to follow this policy may result in disciplinary action, up to and including termination of your employment and other possible legal sanctions.

## Attachment H: Virginia Addendum

12VAC5-405-100. Access to and confidentiality of medical records and information.

- A. Private review agents who have been granted a certificate by the department shall have reasonable access to patient-specific medical records and information.
- B. The private review agent's procedures shall specify that specific information exchanged for the purpose of conducting review will be considered confidential, be used by the private review agent solely for the purposes of utilization review and shared by the private review agent with only those parties who have authority to receive such information, such as the claim administrator. The private review agent's process shall specify that procedures are in place to assure confidentiality and that the private review agent agrees to abide by any federal and state laws governing the issue of confidentiality. Summary data which does not provide sufficient information to allow identification of individual patients or providers need not be considered confidential.
- C. When consistent with subsection B of this section and federal and state statutes and regulations, patient-specific data gathered by the private review agent which raises questions of deficiencies in quality may be shared with the hospital's or other facility's Quality Assurance Committee. Prior to the sharing of such information, a private review agent may require the hospital or other facility to assure compliance with confidentiality requirements, to assure the appropriate review and follow-up within that hospital's or other facility's Quality Assurance Committee, and to indemnify the private review agent from inappropriate use of such information.
- D. Chapter 6 (§ [38.2-600](#) et seq.) of Title 38.2 and § [32.1-127.1:03](#) of the Code of Virginia shall apply to private review agents. Prior to the release of patient-specific information to a private review agent, a patient shall provide written consent for the release of such information. If the patient will not authorize the release of information or has refused to sign the release of information forms, the private review agent may then follow its own policy or that of the insurer regarding that refusal.
- E. Medical records and patient-specific information shall be maintained by the private review agent in a secure area with access limited to essential personnel only.
- F. Information generated and obtained by private review agents in the course of utilization review shall be retained for at least five years if the information relates to a case for which an adverse decision was made at any point or if the information relates to a case which may be reopened.

Statutory Authority: §§ [32.1-138.7](#) and [32.1-138.15](#) of the Code of Virginia.

Historical Notes: Derived from Virginia Register Volume 15, Issue 20, eff. July 21, 1999.

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