

DATA USE AGREEMENT

THIS DATA USE AGREEMENT (“Agreement”) is made and entered into on the June 5, 2023 (the “**Effective Date**”) by and between **UCare Minnesota (“UCare”)** and **Red Wing Public Schools (“COMPANY”)**, collectively referred to herein as the “Parties.”

Background

- A. UCare possesses protected health information (“PHI”) in its electronic record system (“UCare System”) with respect to members whose providers have submitted claims to UCare for reimbursement.
- B. Company is a School District that provides community education services to UCare members who receive a discount on the community education services as a result of their enrollment in UCare’s products.
- D. Company needs access to certain limited member PHI, which is initially provided by UCare members to Company and then validated by Company with UCare, for identification of members who are eligible for UCare’s community education discount and reimbursement purposes.
- E. The PHI that Company needs from the UCare System is referred to herein as the “Data.”

NOW, THEREFORE, in consideration of the foregoing and the rights and obligations set forth herein, the Parties agree as follows:

- Incorporation of Recitals.** The recitals set forth in the “Background” section above are, by this reference, incorporated into and deemed a part of this Agreement.
- Scope of Services.** UCare shall confirm member eligibility for its community education discount with Company using Company’s designated secure platform, or a mutually agreed upon alternative process, that ensures the security and confidentiality of all PHI provided to Company by UCare.
- General Uses and Disclosures.** Except as otherwise limited in this Agreement, Company may use or disclose Data only for the purpose of providing community education services to UCare members, as described in this Agreement, if such use or disclosure by Company complies with minimum necessary requirements under the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and if such use or disclosure of Data would not violate HIPAA, HITECH, Minnesota Government Data Practices Act, or any related privacy and security regulations.
- Limits on Uses and Disclosures.** Company agrees that Company shall be prohibited from using or disclosing the Data for any purpose other than as expressly permitted or required by this Agreement or as required by law.
- Prohibited Uses and Disclosures.** Company shall not directly or indirectly receive remuneration in exchange for Data created, received, or maintained in connection with Company’s relationship with UCare. Notwithstanding the foregoing: (a) this shall not prohibit Company from using the Data to seek reimbursement from UCare for community education services provided by Company to UCare’s members; and (b) the parties recognize and agree that any remuneration received under clause (a) of this Section 6 shall not constitute the sale of PHI, as set forth in 45 CFR Section 164.502(a)(5)(ii).

7. Company Obligations.

7.1 Appropriate Safeguards. Company shall establish and maintain reasonable and appropriate administrative, physical, and technical safeguards to:

(a) Prevent the use or disclosure of the Data, other than as such use or disclosure is permitted by this Agreement, by, among other things, encrypting electronic Data and destroying paper Data when it is not in use; and

(b) Protect the confidentiality, integrity, and availability of the Data that Company receives, maintains, or transmits.

7.2 Reports of Improper Use, Disclosure, or Security Incidents. Company agrees that Company shall report to UCare, in writing within five (5) calendar days after discovery, any:

(a) Use or disclosure of “Unsecured” Data not provided for, or allowed by, this Agreement; or

(b) Security incidents regarding Unsecured Data of which Company becomes aware. “Unsecured Data” shall have the same meaning as the term unsecured PHI set forth at 45 CFR Section 164.402.

7.3 Subcontractors and Agents. Company shall ensure that any agent including a subcontractor, to whom Company provides Data agrees in writing to:

(a) The same restrictions and conditions that apply to Company in this Agreement to such Data; and

(b) Implement reasonable and appropriate administrative, physical, and technical safeguards to protect the Data.

7.4 Mitigation Procedures. Company agrees to mitigate, to the extent practicable, any harmful effect that is known to Company of a use or disclosure of Data by Company in violation of the requirements of this Agreement.

7.5 Notification of Breach.

(a) During the term of the Agreement, Company shall notify UCare, in writing and in accordance with Section 7.2, within five (5) business days of the date of Company’s discovery of any suspected or actual breach or other breach of security, intrusion or unauthorized use or disclosure of Unsecured Data in violation of any applicable federal or state laws or regulations.

(b) In the event of a breach with respect to Unsecured Data, written notification shall include, to the extent possible, (i) the identification of each individual whose Unsecured Data has been, or is reasonably believed by Company to have been, accessed, acquired, used, or disclosed during the breach, (ii) a brief description of what happened, including the date of the breach and the date of the Company’s discovery of the breach, if known, (iii) a description of the types of Unsecured Data involved in the Breach, (iv) any steps affected individuals should take to protect themselves from potential harm resulting from the breach, (v) a brief description of what Company is doing to investigate the breach, to mitigate harm to Individuals, and to protect against further breaches, and (vi) contact procedures for affected individuals, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

(c) Company shall take prompt corrective action to cure any such breach, or other breach of security, intrusion or unauthorized use or disclosure of data, and any action pertaining to such breach, or other breach of security, intrusion or unauthorized use or disclosure required by applicable federal or state laws and regulations.

(d) For purposes of this section, a breach shall be deemed discovered by Company when Company actually knows of the breach or, by exercising reasonable diligence, would have known of the breach.

(e) With respect to any breach of Unsecured Data, Company shall be solely responsible for providing written notices of the breach to affected individuals, the media and the Secretary of the U.S. Department of Health and Human Services, as applicable and all in accordance with 45 CFR Sections 164.404, 164.406 and 164.408. Company shall also have sole responsibility for maintaining a log or other documentation of breaches of Unsecured Data, in accordance with 45 CFR Section 164.408. Notwithstanding the foregoing, Company shall not mention UCare specifically by name or by indirect reference or description in any written notice concerning a breach of Unsecured Data without obtaining UCare's prior written consent.

7.5 Consent and Authorization.

(a) Company acknowledges and affirms that it will obtain a signed and dated consent from all members participating in the community education services referenced in this agreement authorizing Company to release member's PHI to UCare for the purposes documented in this Agreement and authorizing UCare to release members' PHI to Company for the same purposes. Company agrees to promptly notify UCare if member refuses to sign consent or if later revokes their consent.

8. Term and Termination.

8.1 Term. The term of this Agreement shall commence as of the Effective Date and shall terminate when all of the Data provided by UCare to Company is destroyed or returned to UCare.

8.2 Termination for Cause. Upon UCare's knowledge of a material breach of this Agreement by Company, UCare shall provide written notice of such breach to Company and provide an opportunity for Company to cure the breach or end the violation, and if Company does not cure the breach or end the violation within thirty (30) calendar days following the date Company receives such written notice from UCare, UCare may immediately terminate this Agreement. UCare may terminate this Agreement immediately without opportunity for cure if Company and UCare agree that cure is not reasonably possible or if UCare deems such immediate termination to be appropriate under the circumstances.

8.3 Effect of Termination.

(a) Except as otherwise limited in this Agreement, upon termination of this Agreement, for any reason, Company shall return all Data received from UCare, or, to the extent authorized by UCare, destroy such Data. If UCare elects destruction, Company shall certify in writing that the Data has been destroyed and shall describe the manner in which it was destroyed. This provision shall apply to Data that is in the possession of subcontractors or agents of Company. Company shall retain no copies of Data, except in accordance with Company's data and document retention policies and procedures, applicable laws and the terms of this Agreement.

(b) Except as otherwise limited in this Agreement, in the event Company determines that returning, or as authorized by UCare destroying, the Data is not feasible, Company shall provide to UCare notification of the conditions that make return or destruction of the Data not feasible. Upon mutual agreement of the Parties that return or destruction of Data is not feasible, Company shall extend the

protections of this Agreement to such Data and limit further uses and disclosures of such Data to those purposes that make the return or destruction not feasible, for so long as Company maintains such Data.

(c) Except as otherwise limited in this Agreement, termination of this Agreement shall not relieve either Party from fulfilling any obligation under this Agreement that, at the time of termination, has already accrued to the other Party or which thereafter may accrue with respect to any act or omission that occurred prior to such termination.

9. Limited Warranty. UCare warrants to Company that the Data is the data that existed on the UCare System at the time of extraction.

10. Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTION 9 ABOVE, UCARE MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE DATA. TO THE FULLEST EXTENT PERMITTED BY LAW, UCARE HEREBY DISCLAIMS ALL WARRANTIES, OBLIGATIONS AND LIABILITIES (WHETHER EXPRESS OR IMPLIED, OR ARISING BY LAW OR OTHERWISE) WITH RESPECT TO ANY BUG, ERROR, OMISSION, DEFECT, DEFICIENCY, INACCURACY, OR NONCONFORMITY IN THE DATA, INCLUDING WITHOUT LIMITATION: (A) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (C) CLAIMS OF INFRINGEMENT; AND (D) STATUTORY REMEDIES. UCARE DOES NOT WARRANT, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS, THAT: (I) THE DATA WILL MEET COMPANY'S REQUIREMENTS, INCLUDING BUT NOT LIMITED TO QUALIFYING FOR INCENTIVE PAYMENTS OR AVOIDING FINANCIAL PENALTIES UNDER ANY DATA REPORTING OBLIGATIONS; (II) THE DATA IS FREE FROM ALL BUGS, ERRORS, OR OMISSIONS; OR (III) USE OF THE DATA WILL BE UNINTERRUPTED OR ERROR FREE.

11. Limitation of Liability. IN NO EVENT WILL UCARE BE LIABLE TO COMPANY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES (WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS). THIS EXCLUSION OF DAMAGES APPLIES EVEN IF UCARE HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND HOWEVER THE DAMAGES HAVE ARISEN (WHETHER OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT; OR ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR EXPRESS OR IMPLIED WARRANTY UNDER THIS AGREEMENT OR ANY THEORY OF LAW SUCH AS MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT).

12. General.

12.1 Binding Effect. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and the Parties' respective successors and permitted assigns.

12.2 Notice. All notices to be made under this Agreement must be given in writing to the subject Party at the address listed below, and will be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; and (iii) if by facsimile telecommunication or other form of electronic transmission, upon receipt when the notice is directed to a facsimile telecommunication number or electronic mail address listed below and the sending facsimile machine or electronic mail address receives confirmation of receipt by the receiving facsimile machine or electronic mail address.

UCare
500 Stinson Boulevard NE
Minneapolis, MN 55413
Attention: Health Promotion

Red Wing Public Schools ISD#256
2451 Eagle Ridge Drive
Red Wing, MN 55066
Attention: Superintendent

12.3 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed or scanned copies of manually executed signature pages to this Agreement shall be fully binding and enforceable without the need for delivery of the original manually executed signature page.

12.4 Remedies Cumulative. All rights and remedies of the Parties under this Agreement shall be cumulative, and no such right or remedy shall exclude any other right or remedy allowed by law or equity.

12.5 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12.6 Indemnification. Company shall reimburse, defend, indemnify, and hold harmless UCare and UCare's affiliates and UCare's and UCare's affiliates' partners, shareholders, members, owners, directors, managers, officers, employees, contractors, and agents for, from, and against any and all claims, damages, losses, deficiencies, liabilities, penalties, charges, costs, and expenses (including attorneys' fees) resulting from, relating to, or arising out of, (i) any failure by Company (or any contractor or agent of Company) to comply with the terms and conditions of this Agreement, (ii) any breach of Unsecured Data, (iii) any act or omission of Company or its employees, contractors, or agents, and (iv) any use or misuse of the Data.

12.7 Cooperation. Both Company and UCare acknowledge that mutual cooperation and assistance is essential to each Party's performance under this Agreement; therefore, it will be the duty of both Parties to make all good faith efforts to fully cooperate in the performance of this Agreement.

12.8 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Minnesota (without regard to Minnesota's conflicts of laws rules). Venue of any action relating to, or arising out of, this Agreement shall lie exclusively in the courts located in the City of Minneapolis, Minnesota. The Parties irrevocably (i) agree that all claims in respect of such action or proceeding may be heard and determined in such courts, (ii) waive, to the fullest extent they may effectively do so, the defense of an inconvenient or inappropriate forum to the maintenance of such action or proceeding, and (iii) waive any defense based on lack of personal jurisdiction of any such purpose.

12.9 Equitable Relief. Company understands and acknowledges that any disclosure or use of Data in violation of this Agreement may cause UCare irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that UCare shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure

or breach or any threatened disclosure or breach. Company expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond or other security by UCare.

12.10 Enforcement. If either Party brings an action because it believes the other has violated any commitments, obligations, representations or warranties pursuant to this Agreement, the non-prevailing Party will be liable to the other for any damages suffered as a result, including reasonable attorney's fees and costs incurred in pursuing its rights hereunder.

12.11 Assignment. Company may not assign this Agreement, or delegate or subcontract Company's rights, duties, or obligations under this Agreement, without prior, express, and written consent of UCare.

12.12 Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any third-party beneficiary rights in any person or entity.

12.13 Waivers. The failure of a Party at any time or times to require performance of any provision of this Agreement shall in no manner affect such Party's right at a later time to enforce such provision. No waiver by a Party of any provision or breach of this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver in other any instance.

12.14 Primacy. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.

12.15 Relationship. Company is acting as an independent contractor of UCare with respect to this Agreement. Nothing in this Agreement shall create or be deemed to create the relationship of employer/employee, partners, joint ventures, or principal-agent between the Parties. Except as otherwise set forth in this Agreement, (i) no Party shall have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other Party or to bind the other Party in any manner whatsoever, and (ii) no Party shall make any representation, warranty, covenant, agreement, or commitment on behalf of the other Party.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Data Access Agreement as of the Effective Date.

UCARE MINNESOTA

RED WING PUBLIC SCHOOLS

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date