



BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made as of the ____ day of _____, 20____ by and between Warren, Washington & Albany ARC (WWAARC) (“Covered Entity”), a New York not-for-profit corporation, and _____ (“Business Associate”), for the purpose of compliance with the Health Insurance Portability and Accountability Act and its implementing administrative simplification regulations (45 CFR 160-164) (HIPAA) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH). This Agreement hereby amends and is incorporated into any underlying agreement between Warren, Washington & Albany ARC (WWAARC) (Covered Entity) and the Business Associate.

RECITALS

Covered Entity and Business Associate mutually agree to the terms of this Agreement to comply with the requirements of the Standards for Security and Privacy of Individually Identifiable Information (the "Security and Privacy Regulations"), as applicable, under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, as well as with the Health Information Technology for Economic & Clinical Health Act ("HITECH"), Subtitle D-Privacy (§§13400-13424), as part of the American Recovery and Reinvestment Act of 2009, as amended.

Business Associate and Covered Entity have a business relationship such that Covered Entity may be deemed to be a Covered Entity, and in conducting such activities on behalf of Covered Entity, Business Associate may be deemed a business associate of Covered Entity.

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") (as defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this Agreement in compliance with the HIPAA Security and Privacy Regulations and HITECH.

HIPAA Security and Privacy Regulations and HITECH require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in this Agreement.

A. Definitions

1. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
2. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.
3. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Warren, Washington & Albany ARC (WWAARC).
4. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
5. SHIELD Act. "Shield Act" means the New York Stop Hacks and Improve Electronic Data Security Act at New York General Business Law Sections 899-aa and 899-bb.

B. Obligations and Activities of Business Associate

Business Associate agrees to:

1. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
3. Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
4. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
5. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
6. Make available protected health information in a designated record set to Covered Entity as necessary to satisfy Covered Entity's access obligations, if any, under 45 CFR 164.524;
7. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations, if any, under 45 CFR 164.526;

8. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations, if any, under 45 CFR 164.528;
9. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and
10. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
11. To the extent that PHI covered by this agreement constitutes "private information" as defined by the SHIELD Act, if that information is accessed or acquired during a breach, the Business Associate will notify the Covered Entity and shall also provide the notice required under the SHIELD Act to the New York State Attorney General, the New York State Department of State, and the New York State Division of State Police, along with any other notice requirements.
12. To the extent that a breach notification is required to be made to the Secretary of the U.S. Department of Health and Human Services (HHS) pursuant to HITECH or HIPAA, notice shall also be provided to the New York State Attorney General within five (5) days of notifying HHS as required by the SHIELD Act.

C. Permitted Uses and Disclosures by Business Associate

1. Business Associate may use or disclose protected health information on behalf of, or to provide services to Covered Entity as permitted by this Agreement.
2. Business Associate may use or disclose protected health information as required by law.
3. Business Associate agrees to limit uses and disclosures and requests for protected health information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure or request.
4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except with regards to the data aggregation, management, administration and legal responsibilities of the Business Associate.
5. Business Associate may use protected health information for the Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
6. Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
7. Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.

D. Obligations of the Covered Entity

1. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible if done by Covered Entity.
2. Covered Entity shall notify Business Associate of:
 - a. any limitation(s) in Covered Entity's notice of privacy practices under 45 CFR 164.520;
 - b. of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information; or,
 - c. any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that Business Associate's use or disclosure of protected health information will be affected.

E. Term and Termination

1. Term. This Agreement shall continue in force so long as any underlying contract or relationship between the Covered Entity and Business Associate remains in force.
2. Termination for Cause. The Covered Entity shall provide written notice if it determines that Business Associate has breached any material provision of this Agreement. The written notice must contain the facts necessary for Business Associate to evaluate and cure the alleged breach. If the breach is not cured within 30 days, the Covered Entity may immediately terminate this Agreement.
3. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - a. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - b. Destroy the remaining protected health information that Business Associate still maintains in any form;
 - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
 - d. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at above which applied prior to termination; and
 - e. Destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

4. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

F. Miscellaneous

1. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
3. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.



IN WITNESS WHEREOF, the Covered Entity and the Business Associate execute this Business Associate Agreement to be effective as of the date written above:

Covered Entity

Business Associate

By: _____
(Signature)

By: _____
(Signature)

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please sign and return to:

Anne Marie Aussicker
Executive Assistant
WWAARC
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