

BUSINESS ASSOCIATE AGREEMENT

This Agreement is effective the 1st day of January, 2015, by and between **DOCTORS HOSPITAL AT RENAISSANCE** (hereinafter "DHR") and **HIDALGO COUNTY WIC PROGRAM** (hereinafter "Business Associate"). DHR and Business Associate may be individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, DHR and Business Associate are contemplating a contract to provide encouragement and support and basic education to new mothers on breastfeeding (collectively "Services"), and in the continued performance of these Services: may create, receive, use, disclose, or have access to protected health information; and

WHEREAS, DHR acknowledges that it is a "Covered Entity" and Business Associate acknowledges and agrees that it may be a "Business Associate" as those terms are defined under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and its implementing regulations, specifically 45 C.F.R. § 160.103; and

WHEREAS, DHR and Business Associate mutually desire to outline their individual responsibilities with respect to the use and/or disclosure, safeguarding, and transmission of Protected Health Information ("PHI") and electronic Protected Health Information (ePHI), as mandated by the Privacy Rule and Security Rule (jointly referred to as "the Rules") under HIPAA and its implementing regulations at 45 C.F.R. Parts 160-164; and

WHEREAS, DHR and Business Associate understand and agree that the Rules require that a "Covered Entity" and "Business Associate" enter into this Agreement, as required by 45 C.F.R. § 164.314(a) and 45 C.F.R. § 164.504(e), respectively, and that this Agreement is intended to satisfy these obligations and will govern the terms and conditions under which such PHI and/or ePHI may be used and/or disclosed and safeguarded by Business Associate.

NOW, THEREFORE, in consideration of the Parties' continuing obligations under the Contract, in compliance with the Rules, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the obligations imposed by the Rules, and to protect the interests of the Parties.

I. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. Parts 160-164 and HITECH, 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 (defined below), as applicable:

- a. **Business Associate** is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A Business Associate is also a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate.
- b. **Breach** shall have the same meaning as the term "breach" in Section 13400 of the HITECH Act and shall include the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information. In this context, "compromises the

security or privacy" means there is a significant risk of financial, reputational, or other harm to the individual".

- c. **Compliance Date** shall mean, in each case, the date by which compliance is required under the referenced provision of HITECH.
- d. **Covered Entity** shall generally have the same meaning as 45 C.F.R. §160.103.
- e. **Designated Record Set** shall have the same meaning given such term in 45 C.F.R. § 164.501.
- f. **Electronic Protected Health Information (ePHI)** shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103 and HITECH and includes Protected Health Information transmitted by, or maintained in, electronic media.
- g. **HIPAA Rules** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- h. **HITECH** shall mean the Health Information Technology for Economic and Clinical Health Act, which is Title XIII Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. Law No. 11.1-5 and its implementing regulations.
- i. **Individual** shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- j. **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E.
- k. **Protected Health Information (PHI)** shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of DHR.
- l. **Secretary** shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- m. **Security Rule** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, subpart C.
- n. **Unsecured Protected Health Information (unsecured PHI)** shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402(h) of the HITECH Act. This shall include PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services ("HHS") guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740).

II.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to use or disclose PHI only as permitted or required by this Agreement or as required by law and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e).

- b. Business Associate agrees to (i) implement and use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement or the Contract including but not limited to administrative, physical, and technical safeguards; (ii) document and keep such safeguards current; (iii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, maintains, or transmits on behalf of DHR; and (iv) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in Subpart C of 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316. Business Associate acknowledges that the additional requirements of HITECH that relate to security and privacy that apply to DHR also will apply to Business Associate and are incorporated into this Agreement by reference.
- c. Business Associate agrees to use reasonable efforts to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the Contract.
- d. Business Associate agrees to immediately report to DHR (i) any use or disclosure of PHI not provided for by this Agreement or the Contract of which it becomes aware; (ii) any Security Incident or Breach affecting Unsecured PHI of DHR of which it becomes aware as required at 45 C.F.R. §164.410; and (iii) without unreasonable delay and in no case later than sixty (60) calendar days after discovery of any Breach of any Unsecured PHI in accordance with the Security breach notification requirements set forth in 42 U.S.C. § 17932 as of its Compliance Date. Business Associate shall coordinate efforts with DHR to notify affected Individuals about any non-permitted or violating use or disclosure of PHI and, to the extent possible or available, Business Associate shall provide DHR with the following information:
- i. The identification of the individual(s) whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during the Breach;
 - ii. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
 - iii. A description of the types of Unsecured PHI that were involved in the Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - iv. Any steps individuals who were subjects of the Breach should take to protect themselves from potential harm that may result from the Breach;
 - v. A brief description of what the Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
 - vi. Contact procedures for individuals to ask questions or learn additional information; including a toll free telephone number, an email address, Web site, or postal address.

Business Associate may utilize attached form Exhibit A to satisfy the notification requirement provided above.

- e. Business Associate agrees (i) to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of DHR agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to that information, and (ii) to the extent that Business Associate provides ePHI to an agent, including a subcontractor, ensure that the agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect that information in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308 (b)(2), if applicable.
- f. To the extent that Business Associate maintains a Designated Record Set on behalf of DHR, Business Associate agrees to provide access, at the request of DHR, and in the time and manner mutually agreed, to PHI in that Designated Record Set, to DHR or, as directed by DHR, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.

- g. To the extent that Business Associate maintains a Designated Record Set on behalf of DHR, Business Associate agrees to make any amendment(s) to PHI in that Designated Record Set that DHR directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of DHR or an Individual, and within thirty (30) days of receiving written request from DHR.
- h. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, DHR available to the Secretary, in a time and manner mutually agreed or designated by the Secretary, for purposes of the Secretary determining DHR's compliance with the HIPAA Rules.
- i. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for DHR to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(c). Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to any request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an Electronic Health Record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person, (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose for the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- j. Business Associate agrees to provide to DHR or, when directed in writing by DHR, directly to an Individual, within fifteen (15) days of receiving written request from DHR, information collected in accordance with Section II.i of this Agreement, to permit DHR to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(c).
- k. Business Associate shall not disclose PHI to a health plan, for payment or health care operation purposes, if the patient has requested this restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates in accordance with 42 U.S.C. § 17935 as of its Compliance Date.
- l. In the event that Business Associate, in connection with the Services provided pursuant to the Contract, uses or maintains an Electronic Health Record of information of or about an Individual, then the Business Associate shall provide an electronic copy (at the request of DHR, and in the time and manner designated by DHR.) of the PHI, to DHR or, as directed by DHR, to an Individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.
- m. Business Associate shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided that Business Associate comply with 42 U.S.C. § 17935(b) as of its Compliance Date.
- n. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI in compliance with 42 U.S.C. § 17935(d) as of its Compliance Date, except with the prior written consent of DHR and as permitted by HITECH; however, this prohibition shall not affect payment to Business Associate for Services provided pursuant to the Contract.

- o. Business Associate shall not make or cause to be made any (marketing) communication about a product or service that encourages recipients of the communication to purchase or use the product or service as prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.
- p. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

III.

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. General Use and Disclosure Provision

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, DHR as specified in the Contract, provided that, except as set forth in Section III.b, such use or disclosure would not violate the Rules if done by DHR.

b. Specific Use and Disclosure Provisions

- i. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate
 - i. "legal responsibilities" of Business Associate shall mean responsibilities imposed by law or regulation but (unless otherwise expressly permitted by DHR) shall not mean obligations Business Associate may have assumed pursuant to contracts, agreement, or understandings with entities other than DHR.
- ii. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are made in connection with Services, and the law requires such disclosure, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- iii. On behalf of DHR, Business Associate may de-identify any and all PHI obtained by Business Associate under this Agreement, and use such de-identified data on Business Associate's own behalf for any lawful purpose, all in accordance with the de-identification requirements of the Privacy Rule.
- iv. Except as otherwise limited to this Agreement, Business Associate may use PHI to provide Data Aggregation services to DHR as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
 - i. "Data aggregation" shall mean the combining of PHI by Business Associate with the PHI received by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of DHR or another Covered Entity.
- v. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

**IV.
OBLIGATIONS OF DHR**

Provisions for DHR to inform Business Associate of Privacy Practices and Restrictions; Compliance Obligations:

- a. DHR shall notify Business Associate of any limitation(s) in its notice of privacy practices of DHR in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI under this Agreement.
- b. DHR shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI under this Agreement.
- c. DHR shall notify Business Associate of any restriction on the use or disclosure of PHI to which DHR has agreed in accordance with 45 C.F.R. § 164.522 or 42 U.S.C. § 17935(a) as of its Compliance Date, to the extent that such restriction may affect Business Associate's use or disclosure of PHI under this Agreement.
- d. DHR in performing its obligations and exercising its rights under this Agreement shall use and disclose PHI in compliance with the Rules and HITECH.

**V.
PERMISSIBLE REQUESTS BY DHR**

DHR shall not request or require Business Associate to use or disclose PHI in any manner that would not be permissible under the Rules if done by DHR, provided that Business Associate may use or disclose PHI as set forth in Section III.b of this Agreement. DHR shall disclose or provide access to Business Associate only the minimum PHI necessary for Business Associate to perform its obligations under the Contract as required by the Privacy Rule and 42 U.S.C. § 17935(b) as of its Compliance Date.

**VI.
TERM AND TERMINATION**

- a. Term. The Term of this Agreement shall remain in effect for a period coterminous with the Contract, subject to the obligations of Business Associate upon termination and the right of DHR to enforce those termination provisions.
- b. Termination for Cause. In accordance with 42 U.S.C. § 17934(b), if either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Agreement then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a timely cure reasonably satisfactory to DHR, or in the event that cure is not possible, then DHR shall immediately terminate this Agreement unless neither termination nor cure is feasible, in which case DHR shall report the violation to the Secretary.
- c. Effect of Termination.
 - i. Except as provided in Section VI.c.ii., upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from DHR, or created or received by Business Associate on behalf of DHR, including PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide DHR with notification of the conditions that make return or destruction infeasible and Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**VII.
MISCELLANEOUS**

- a. Amendment of Contract. The Parties agree that this Agreement hereby amends and is incorporated into the Contract as of the Effective Date of this Agreement, and any reference to the Contract on or after that date shall mean the Contract as amended by this Agreement. The terms of this Agreement will govern the use of PHI under the Contract and, except as specified herein, all other terms of the Contract will continue in full force and effect. In the event of any conflict among provisions of this Agreement and the Contract, the provisions of this Agreement will control. This Agreement supersedes all prior Business Associate Agreements between the Parties with respect to the Contract.
- b. Other Confidentiality Obligations. The Parties acknowledge that this Agreement is intended to supplement any and all other confidentiality obligations that either party may have under this or any other agreement or applicable law.
- c. Regulatory Reference. A reference in this Agreement to a section in the Privacy Rule, Security Rule and/or HITECH means the section as in effect or as amended.
- d. Future Amendment. DHR and Business Associate agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule, Security Rule, HIPAA, and HITECH. This Agreement may only be modified, or any rights under it waived, by a written agreement by both Parties. If the Parties are unable to agree on mutually acceptable amendment(s) prior to the effective date of the relevant change of law or regulation, either Party may, upon delivery of written notice to the other, terminate this Agreement and any Contract(s) effective as of such applicable statutory or regulatory effective compliance date.
- e. Notice. Any notice or request for information under this Agreement shall be sent to:
- | | |
|--|--|
| <p>DHR:</p> <p>5501 S. McColl
Edinburg, TX 78539
Attn: Legal Department
Phone: (956) 362-7363
Fax: (956) 362-7436</p> | <p><u>Business Associate:</u></p> <p>_____</p> <p>_____</p> <p>Attn: _____</p> <p>Phone: _____</p> <p>E-mail: _____</p> |
|--|--|
- f. Survival. The respective rights and obligations of Business Associate under Section VI.c of this Agreement shall survive the termination of this Agreement.
- g. Interpretation. The Parties agree that this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and HITECH. Any ambiguity in this Agreement will be resolved to permit both Parties to comply with the Privacy Rule, Security Rule, and/or HITECH and any current or future regulations promulgated thereunder.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed effective as of the date first written above.

Doctors Hospital at Renaissance, Ltd.

Hidalgo County WIC Program

By: _____

By: _____

Name: _____

Name: _____


Title: _____

Title: _____

Date: _____

Date: _____

Co-signatures:

 M. Costumed

Reviewed by
Legal Dept.:

EXHIBIT A: NOTIFICATION TO DOCTORS HOSPITAL AT RENAISSANCE (DHR) OF BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section II.d of the Business Associate Agreement between DHR and Hidalgo County WIC Program.

Business Associate hereby notifies DHR that there has been a breach of unsecured (unencrypted) Protected Health Information (PHI) that Business Associate has used or has had access to under the terms of our underlying Contract or Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____

Date of discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information for further questions or additional information if needed:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Note: The Business Associate must use this form to notify DHR of any Breach of Unsecured Protected Health Information. In such event, immediately provide a copy of this completed form to (1) DHR's Legal Department and (2) DHR's Privacy Officer at:

Doctors Hospital at Renaissance, Ltd
Attn: Legal Department and Privacy Officer
5501 S. McColl
Edinburg, TX 78539