

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is effective as of _____, 200__ ("Effective Date"), and entered into by and between _____, whose address is _____ ("Business Associate") and THE REGIONAL CANCER CENTER, whose address is 2500 West 12th Street, Erie, Pennsylvania 16505 ("RCC").

The reasons for this Agreement are as follows:

- A. RCC is a "Covered Entity" subject to the Standards for Privacy of Individually Identifiable Health Information contained in 45 C.F.R. parts 160 and 164 (the "Privacy Rule"), and the Security Standards contained in 45 C.F.R. parts 160, 162 and 164 (the "Security Rule").
- B. Business Associate currently provides, or may provide in the future, certain services to or for RCC, consisting of the following: _____ (collectively, the "Services").
- C. Business Associate currently provides the Services, or desires to provide the Services in the future, pursuant to a written or oral agreement with RCC (the "Services Agreement").
- D. The proper performance of the Services by Business Associate may necessitate the disclosure by RCC to Business Associate of certain "Protected Health Information," as defined in the Privacy Rule at 45 C.F.R. § 164.501.
- E. RCC and the Business Associate are required to comply with Title XIII of The American Recovery and Reinvestment Act of 2009, also known as the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act").
- F. The parties desire to comply with the Privacy Rule, the Security Rule and the HITECH Act.
- G. This Agreement sets forth the terms and conditions under which Protected Health Information will be handled between Business Associate and RCC, and between Business Associate and third parties during the term in which Services are provided by the Business Associate and thereafter.

NOW THEREFORE, for good and valuable consideration, and intending to be legally bound, the parties agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, capitalized terms used herein shall have the meanings given to such terms in the Privacy Rule, the Security Rule and the HITECH Act.

2. Obligations and Activities of Business Associate.

(a) Use and Disclosure of Protected Health Information. Business Associate shall use and disclose Protected Health Information only if such use or disclosure is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), and Business Associate shall not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.

(b) Appropriate Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Policies and Procedures; Workforce Training. Business Associate shall maintain written policies and procedures in order to comply with the requirements of the Privacy Rule, the Security Rule and the HITECH Act, and shall train members of its workforce on such policies and procedures.

(d) Mitigation and Breach Notification. Business Associate shall 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, and shall notify RCC of any breach of Unsecured Protected Health Information in accordance with the requirements of § 13402 of the HITECH Act.

(e) Reports. Within five days of Business Associate becoming aware of any use or disclosure of Protected Health Information not authorized by this Agreement, Business Associate shall report such unauthorized use or disclosure to RCC in writing.

(f) Assurances Regarding Agents. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by, Business Associate on behalf of RCC will agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(g) Access. In the time and manner reasonably designated by RCC, Business Associate shall provide access to Protected Health Information in a Designated Record Set to RCC or, as directed by RCC, to an Individual, in order to meet the requirements under 45 C.F.R. § 164.524.

(h) Amendments. Business Associate shall make any amendments to Protected Health Information in a Designated Record Set that RCC directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of RCC or an Individual, and in the time and manner designated by RCC.

(i) Practices, Book and Records. Business Associate shall make internal practices, books and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, RCC available to RCC, or to the Secretary, in a time and manner requested by RCC or designated by the Secretary, for purposes of the Secretary determining RCC's compliance with the Privacy Rule and the Security Rule.

(j) Documentation of Disclosures. Business Associate shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for RCC to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(k) Provision of Information. Business Associate shall provide to RCC or an Individual, in the time and manner reasonably designated by RCC, information collected in accordance with section 2(j) of this Agreement, to permit RCC to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If requested by RCC, Business Associate shall respond directly to an Individual requesting an accounting of disclosures of Protected Health Information.

(l) Compliance with Privacy Rule Requirements. Business Associate shall comply with the Privacy Rule to the same extent that such compliance is required by the HITECH Act.

(m) No Remuneration. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information unless RCC first obtains a valid authorization from the Individual and otherwise satisfies the requirements of 45 C.F.R. § 164.508

3. Permitted Uses and Disclosures by Business Associate.

(a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, RCC as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule.

(b) Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Minimum Necessary. Business Associate shall only request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

4. Obligations of RCC.

(a) Notification of Limitations in Notice of Privacy Practices. RCC shall notify Business Associate of any limitations in its Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Notification of Change or Revocation of Permission. RCC shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Notification of Agreed Upon Restrictions. RCC shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that RCC has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Impermissible Requests. RCC shall not request Business Associate to use or disclose Protected Health Information in any manner that is not permissible under the Privacy Rule, the Security Rule or the HITECH Act.

5. Security Requirements.

(a) Implementation of Safeguards. Business Associate shall implement administrative, physical, and technical safeguards that appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of RCC, as required by the HITECH Act and by 45 C.F.R §§ 164.308, 164.310, 164.312 and 164.316.

(b) Reporting Security Incidents. Within 10 days of becoming aware of a Security Incident, Business Associate shall notify RCC. At the request of RCC, Business Associate shall identify the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate shall promptly take such action as is required by law to address any Security Incident.

(c) Agents and Subcontractors. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees in writing to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information.

6. Term and Termination.

(a) Term. This Agreement shall become effective as of the Effective Date, and shall terminate when all of the Protected Health Information provided by RCC to Business Associate, or created or received by Business Associate on behalf of RCC, is destroyed or returned to RCC or, if it is not feasible to return or destroy the Protected Health Information, when protections are extended to such information, in accordance with the termination provisions in this section.

(b) Termination for Cause. Upon RCC's knowledge of a material breach by Business Associate, RCC may immediately terminate this Agreement and the Services Agreement.

(c) Effect of Termination. Except as otherwise provided in this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from RCC, or created or received by Business Associate on behalf of RCC. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. Notwithstanding the foregoing provision, in the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to RCC notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous.

(a) Notices. Any notices to be given hereunder to a party shall be made by U.S. Mail, or by express courier to such party's address given below, or by fax to the fax telephone numbers listed below.

To Business Associate: _____

To RCC:
2500 West 12th Street
Erie, PA 16505
Attention: Privacy Officer
Fax: (814) 838-0460

Each party named above may change its address by notice thereof in the manner hereinabove provided.

(b) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section in effect, or as amended.

(c) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for RCC to comply with the requirements of the Privacy Rule, the Security Rule, the HITECH Act, and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(d) Survival. The respective rights and obligations of Business Associate under section 6(c) of this Agreement shall survive the termination of this Agreement.

(e) Interpretation. Any ambiguity in this Agreement shall be resolved to permit RCC to comply with the Privacy Rule and the Security Rule. To the extent that the terms of the Services Agreement are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern.

(f) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer upon any person, other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(g) Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

The parties have caused this Agreement to be executed on the date first written above.

THE REGIONAL CANCER CENTER

By: _____
Authorized Signatory

BUSINESS ASSOCIATE:

By: _____
Name and Title

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Revised February 10, 2010