

FIRST AMENDMENT TO BUSINESS ASSOCIATE AGREEMENT

This Amendment is made to the existing HIPAA Business Associate Agreement (the “Agreement”) by and between *[NAME OF BUSINESS ASSOCIATE]*, hereinafter called “Business Associate” and The Regional Cancer Center, hereinafter called “RCC.” Business Associate and RCC shall be referred to here in individually as a “Party” or collectively as the “Parties.”

The Parties agree to amend the Agreement as follows by adding the following provisions:

1. Business Associate shall report to RCC any breach of Unsecured protected health information (PHI) that it becomes aware of as required by Section 13402(b) of the American Recovery & Reinvestment Act of 2009, commonly referred to as the Stimulus Bill (Pub.L. 111-5). Unsecured PHI (unless subsequently defined differently by the Secretary of Health and Human Services) refers to PHI that is not secured by a technology standard that renders PHI unusable, unreadable or indecipherable to unauthorized individuals and is developed and endorsed by an organization accredited by the American National Standards Institute (ANSI). The report to RCC shall include the name of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such breach and shall be provided within two (2) business days of becoming aware of such breach. Business Associate will indemnify RCC for any reasonable expenses that RCC incurs in notifying individuals of a breach caused by Business Associate or its subcontractors or agents.
2. Business Associate agrees to the following HIPAA security standards:
 - 45 CFR 164.308 (Administrative Safeguards)
 - 45 CFR 164.310 (Physical Safeguards)
 - 45 CFR 164.312 (Technical Safeguards)
 - 45 CFR 164.316 (Policies and Procedures and Documentation Requirements)

These provisions can be found at

<http://www.cms.hhs.gov/SecurityStandard/Downloads/securityfinalrule.pdf>. If Business Associate violates any of these provisions, the penalties as set forth in Section 1176 (General Penalty for Failure to Comply With Requirements & Standards) and Section 1177 (Wrongful Disclosure of Individually Identifiable Health Information) of the Social Security Act shall apply to Business Associate. This information can be located at:

http://www.ssa.gov/OP_Home/ssact/title11/1176.htm and
http://www.ssa.gov/OP_Home/ssact/title11/1177.htm.

3. As required in Pub.L. 111-5 Section 13404, if Business Associate knows of a pattern of activity or practice that constitutes a material breach or violation of Business Associates obligations under these terms, Business Associate must take reasonable steps to cure the breach or end the violation, as applicable. If Business Associate is unable to cure the breach or end the violation, Business Associate shall inform RCC, and RCC shall either:
 - (A) Terminate the contract or arrangement, if feasible; or
 - (B) If termination is not feasible, report the problem to the Secretary.

If Business Associate violates this provision, the penalties as set forth in Section 1176 (General Penalty for Failure to Comply With Requirements & Standards) and Section 1177 (Wrongful Disclosure of Individually Identifiable Health Information) of the Social Security Act shall apply to Business Associate. These provisions can be found at http://www.ssa.gov/OP_Home/ssact/title11/1176.htm and http://www.ssa.gov/OP_Home/ssact/title11/1177.htm.

4. As required by Pub.L. 111-5 Section 13405(d)(1), and unless approved by RCC, consistent with the exceptions set forth in Pub.L. 111-5 Section 13405(d)(2), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless RCC has obtained from the Individual a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that Individual.
5. As defined in Pub.L. 111-5 Section 13406(a) and 45 CFR 164.508, and unless approved by RCC , Business Associate shall not directly or indirectly perform marketing to Covered Entity patients using PHI that was either provided by RCC , or created or otherwise acquired by Business Associate on behalf of RCC .
6. As provided for in Pub.L. 111-5 Section 13411, Business Associate shall be subject to audits by the Secretary to ensure they comply with Subtitle D (Privacy) of Pub.L. 111-5 as well as 45 CFR 164 subparts C and E.
7. Section 2(i) of the Agreement is hereby amended and restated as follows:
Business Associate shall document such disclosures of PHI 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 PHI in accordance with 45 CFR Section 164.528 and in Pub.L. 111-5 Section 13405(c). Business Associate further agrees to provide to RCC or an Individual, as applicable, in a time and manner as prescribed by the Privacy Rule and Pub.L. 111-5, such information collected in accordance with this paragraph in response to a request for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528 or Pub.L. 111-5. Such time and manner shall comply with the obligations under the Privacy Rule or Pub.L. 111-5.
8. Except as specifically modified by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.