

RESOLUTION R-19-138

A RESOLUTION OF THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING A STANDARD HIPAA BUSINESS ASSOCIATE AGREEMENT; PROVIDING FOR THE DELEGATION OF AUTHORITY TO EXECUTE THE STANDARD AGREEMENT; PROVIDING FOR REPORTING; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder (“HIPAA”), including but not limited to, the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health information in 45 C.F.R. Parts 160-164, and Florida law set forth certain requirements for the security and guard of protected health information; and

WHEREAS, HIPAA requires a healthcare provider (“Covered Entity”) and any third-party vendor (“Business Associate”) that performs services for, or on behalf of, a Covered Entity and has access to or creates a patient’s protected health information in the performance of these services to enter into a Business Associate Agreement for the protection of the privacy and security of protected health information; and

WHEREAS, the Board of County Commissioners (the “Board”) has determined that it is necessary and in the best interest of the County to approve the form of, and delegate authority to execute, a standard Business Associate Agreement in order to comply with the requirements of HIPAA, as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

SECTION 1. APPROVAL OF FORM AGREEMENT FOR USE OF COUNTY PROPERTY FOR CONCESSIONAIRE SERVICES. The Board hereby approves the form of the following Agreement for use of various County-owned property and facilities for concession services:

Exhibit (1) – Standard Business Associate Agreement - attached

The Director of the Public Safety Department (the “Director”), or his or her designee, is hereby authorized and directed to execute the agreements and general conditions (and related amendments thereto), substantially in the form set forth in the above referenced exhibit to this Resolution, with such supplemental documents as are incorporated therein and consistent therewith.

SECTION 2. REPORTING. The Director shall annually provide a list to the Board of all agreements and amendments approved and executed pursuant to Section 1, above.

SECTION 3. SEVERABILITY. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Resolution.

SECTION 4. APPLICABILITY. The form of the agreement and general conditions approved herein shall apply and be utilized in all transactions entered into on or after the effective date hereof.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED with a quorum present and voting this the 24th day of Sept, 2019.



**BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA**

By: Stephen J. Johnson
Chairperson

Date: 9/24/19

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: Ursi Lesman
Deputy Clerk

EXHIBIT 1

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) is made and entered into as of _____, 20__ (“Effective Date”) between **[INSERT NAME OF PARTY] [INSERT ADDRESS]** (“Business Associate”) and Manatee County, a political subdivision of the State of Florida, with offices located at 1112 Manatee Avenue West, Bradenton, Florida, 34205 (“Covered Entity”), each a “Party” and collectively the “Parties.”

WITNESSETH:

WHEREAS, Business Associate performs functions, activities, or services for, or on behalf of covered Entity, and Business Associate receives, has access to or creates Protected Health Information; and

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder (“HIPAA”), including but not limited to, the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health information in 45 C.F.R. Parts 160-164 require that Covered Entity receive adequate assurances that the Business Associate will comply with certain obligations with respect to the Protected Health Information used in the course of providing these services to or on behalf of the Covered Entity; and

WHEREAS, HIPAA requires Covered Entity to enter into a contract with Business Associate to provide for the protection of the privacy and security of Protected Health Information.

NOW THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth herein, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1. RECITALS.

The Parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

ARTICLE 2. DEFINITIONS.

Breach shall have the same meaning as set forth in 45 C.F.R. § 164.402.

Business Associate shall generally have the same meaning as the term “business associate” as defined in 45 C.F.R. § 160.103, and in reference to the Party to this Agreement, shall mean West Coast Southern Medical Services, Inc.

Covered Entity shall generally have the same meaning as the term “covered entity” as defined in 45 C.F.R. § 160.103 and Florida Statutes § 501.171, and in reference to the

Party to this Agreement, shall mean Manatee County.

Data Aggregation shall have the same meaning as set forth in 45 C.F.R. § 160.501.

Designated Record Set shall have the same meaning as set forth in 45 C.F.R. § 160.501.

Disclosure shall have the same meaning as set forth in 45 C.F.R. § 160.103.

Electronic Media shall have the same meaning as set forth in 45 C.F.R. § 160.103.

Electronic Protected Health Information (“ePHI”) shall mean PHI transmitted or maintained in Electronic Media.

Health Information shall have the same meaning as set forth in 45 C.F.R. § 160.103.

HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164.

Individual shall have the same meaning as set forth in 45 C.F.R. § 160.103.

Individually Identifiable Health Information shall have the same meaning as set forth in 45 C.F.R. § 160.103 and Florida Statutes § 501.171(g).

Privacy Regulations shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended, modified or superseded, from time to time.

Protected Health Information (“PHI”) shall have the same meaning as set forth in 45 C.F.R. § 160.103.

Security Incident shall have the meaning as set forth in 45 C.F.R. § 164.304.

Security Measures shall have the meaning as set forth in 45 C.F.R. § 164.304.

Security Regulations shall mean the Standards for Security of Individually Identifiable Electronic Health Information at 45 C.F.R. Parts 160 and 164, Subparts A, C and E, as may be amended, modified or superseded, from time to time.

Unsecured Protected Health Information (“Unsecured PHI”) shall have the meaning as set forth in 45 C.F.R. § 164.402.

Use shall have the same meaning as set forth in 45 C.F.R. § 160.103.

ARTICLE 3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.1 Business Associate may only Use or Disclose PHI as permitted by law or this Agreement.

- 3.2 Business Associate is authorized to Use or Disclose PHI as necessary to perform Services for, or on behalf of, Covered Entity.
- 3.3 Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the law, including without limitation, the HIPAA Rules.
- 3.4 Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Section 3.1.

ARTICLE 4. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

- 4.1 Business Associate shall only Use or Disclose PHI as allowed under this Agreement or applicable law.
- 4.2 Business Associate shall only Use or Disclose PHI in a manner that would not violate the HIPAA Privacy and Security Rule of Florida law if done so by the Covered Entity.
- 4.3 Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 (“Security Measures”) and Florida Statutes § 501.171(2) with respect to ePHI, to prevent Use or Disclosure of PHI other than as provided for by the Agreement.
- 4.4 Business Associate shall report any Use or Disclosure of PHI not permitted by this Agreement or applicable law, including a Breach of Unsecured PHI, as required at 45 C.F.R. § 164.410 and Florida Statutes § 501.171(3)-(6), and any Security Incident of which it becomes aware. For purposes hereof, the term “discovery of a Breach” shall mean that Business Associate, an employee, an officer, a director, or other agent of Business Associate who has acquired actual knowledge of a Breach, or through the exercise of reasonable diligence and inquiry, should have acquired knowledge of a Breach. In accordance with Florida Statutes § 501.171(6), the notice shall be within ten (10) days of the discovery of the Breach. Business Associate shall mitigate, to the extent practicable, any known or reasonably known harmful effects of the Breach.
- 4.5 In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI related to Business Associate’s patients on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- 4.6 In accordance with 45 C.F.R. § 164.524 and within thirty (30) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI

in the form requested by Covered Entity. If the requested PHI is maintained electronically, Business Associate shall provide a copy of the PHI in the electronic form and format requested by the individual if readily producible, or, if not, in a readable electronic form and format as agreed to by the Covered Entity and individual. In the event an Individual requests access to PHI directly from Business Associate, Business Associate shall within ten (10) days forward such request to Covered Entity.

- 4.7 In accordance with 45 C.F.R. § 164.526 and no later than sixty (60) days of receipt of a request from Covered Entity for the amendment of an Individual's PHI in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526. In the event a request for an amendment is delivered directly to Business Associate, Business Associate shall within ten (10) days of receiving such request forward it to Covered Entity.
- 4.8 Business Associate shall maintain and make available the information required to provide an accounting of Disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528. Business Associate shall document Disclosures of PHI and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528. Within twenty (20) calendar days of receipt of a request from Covered Entity, Business Associate shall make available to Covered Entity the information required to provide an accounting of such Disclosures. 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 the request (except for Disclosures occurring prior to the Effective Date). At a minimum, such accounting information shall include the information described in 45 C.F.R. § 164.528(b), including, without limitation: (i) the date of Disclosure of PHI; (ii) the name of the entity or person who received 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 of the Disclosure that reasonably informs the Individual of the basis for the Disclosure, or a copy of the written request for Disclosure.
- 4.9 To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- 4.10 At the request of Covered Entity or the Secretary of the Department of Health and Human Services, Business Associate shall make its internal practices, books, and records available for purposes of determining compliance with the HIPAA Rules.

ARTICLE 5. COVERED ENTITY'S OBLIGATIONS TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS.

- 5.1 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Disclosure of PHI.
- 5.2 Covered Entity shall notify Business Associate of any restriction on the Use of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

ARTICLE 6. TERM AND TERMINATION.

- 6.1 *Term.* This Agreement shall commence on the Effective Date and shall remain in effect until Business Associate ceases to provide the Services to Covered Entity, unless terminated pursuant to Section 6.2 herein.
- 6.2 *Termination.*
 - a. Either Party shall have the right to terminate this Agreement immediately if it determines that the other Party has breached a material provision of this Agreement and failed to cure such breach within thirty (30) days of written notification.
 - b. If the non-breaching Party determines that cure is not possible, such Party may terminate this Agreement effective immediately upon written notice to the other Party.
 - c. Upon termination of this Agreement, the relationship whereby Business Associate performs the Services to and on behalf of the Covered Entity shall automatically terminate.
- 6.3 *Obligations of Business Associate Upon Termination.* Upon termination of this Agreement, Business Associate shall either return or destroy, at no cost to Covered Entity, all PHI that Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI, in any form. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

ARTICLE 7. NOTICE.

Any and all notices, approvals, claims, consents, demands, requests or other communications between the Parties ("Notices") shall be in writing. All Notices shall be given by hand delivery in person or by registered or certified mail, postage prepaid to the following addresses:

Covered Entity: Manatee County Government
1112 Manatee Avenue West

Bradenton, FL 34205
Attn: Chief
Tel: 941-749-3500
Fax: 941-749-3509
E-mail: james.crutchfield@mymanatee.org

Business Associate: [NAME OF BUSINESS ASSOCIATE]
Attn:
[ADDRESS]
Phone: ([area code] [number])
Email: [email]

All Notices shall be deemed effective and received upon actual receipt by the Party to which such notice is given or five (5) days after mailing, whichever occurs first.

ARTICLE 8. 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.

ARTICLE 9. REGULATORY REFERENCES. A reference in this Agreement to a section in the HIPAA Rules or Florida law means the section as in effect or as amended.

ARTICLE 10. INTERPRETATION. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules and Florida law.

ARTICLE 11. ASSIGNMENT. This Agreement and the rights and obligations hereunder shall not be assigned, delegated, or otherwise transferred by the Business Associate without the prior written consent of BUSINESS ASSOCIATE and any assignment or transfer without proper consent shall be null and void.

ARTICLE 12. GOVERNING LAW; VENUE; JURISDICTION. This Agreement shall be governed by and controlled by the laws of the State of Florida. The Parties agree that exclusive venue shall be in the courts of Manatee County, Florida, for all disputes arising out of this Agreement. The Parties each hereby consent to the personal jurisdiction and venue in such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them.

ARTICLE 13. AMENDMENT OR MODIFICATION. This Agreement may only be amended or modified by mutual written agreement of the Parties; provided, however, that in the event provisions of this Agreement shall conflict with the requirements of the HIPAA Rules or Florida law, this Agreement shall automatically be deemed amended as necessary to comply with such legal requirements.

ARTICLE 14. WAIVER. The failure of either Party at any time to enforce any right or remedy available hereunder with respect to any breach or failure shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the

other Party.

ARTICLE 15. SEVERABILITY. In the event that any provision or part of this Agreement is found to be totally or partially invalid, illegal, or unenforceable, then the provision will be deemed to be modified or restricted to the extent and in the manner necessary to make it valid, legal, or enforceable, or it will be excised without affecting any other provision of this Agreement, with the Parties agreeing that the remaining provisions are to be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

ARTICLE 16. NO THIRD-PARTY BENEFICIARIES. This Agreement does not confer, and is not intended to confer, any rights or remedies upon any person other than the Parties.

ARTICLE 17. RELATIONSHIP OF PARTIES. The relationship of Covered Entity to Business Associate shall be that of an independent contractor. Nothing herein contained shall be construed as vesting or delegating to Covered Entity or any of the officers, employees, personnel, agents, or sub-contractors of Covered Entity any rights, interest or status as an employee of County. County shall not be liable to any person, firm or corporation that is employed by Agreements or provides goods or services to Covered Entity in connection with this Agreement or for debts or claims accruing to such parties. Covered Entity shall promptly pay, discharge or take such action as may be necessary and reasonable to settle such debts or claims.

ARTICLE 18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with respect to the matters contemplated herein and supersedes all previous and contemporaneous oral and written negotiations, commitments, and understandings relating thereto.

ARTICLE 19. COUNTERPARTS. This Agreement may be executed in any number of counterparts, including facsimile or an e-mail of a PDF file containing a copy of the signature page of the person executing this document, each of which shall be an original, but all of which together shall constitute one in the same instrument.

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have caused this Agreement to be executed the day and year first set forth above.

**MANATEE COUNTY, a political subdivision
of the State of Florida**

By: Public Safety Department

By: _____
Director

BUSINESS ASSOCIATE

By:

Print Name & Title of Above Signer