



Maricopa County
Ryan White Part A Program
301 West Jefferson Street
Phoenix, AZ 85003 – 2143
602.372.7091
(Fax) 602.506.6300

BUSINESS ASSOCIATE AGREEMENT

MARICOPA COUNTY RYAN WHITE PART A PROGRAM

ASSOCIATE

Rose Conner _____
301 West Jefferson Street _____
Phoenix, AZ 85003 _____
Fax: 602.506.6300 _____

Agreed to by Maricopa County Ryan White Part A Program by:

Maricopa County Ryan White Part A Program

ASSOCIATE

By: _____

By: _____

SIGNATURE

DATE

SIGNATURE

DATE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

This Agreement sets out the responsibilities and obligations of Associate, as noted above, as a business associate of Maricopa County Ryan White Part A Program, a covered entity, under the Health Insurance Portability and Accountability Act (HIPAA) and pursuant to the Contract between Associate and Maricopa County Ryan White Part A Program.

Maricopa County Ryan White Part A Program may make available and/or transfer to Associate Protected Health Information (“PHI”) of individuals in conjunction with services, which Associate will use or disclose only in accordance with this Agreement. Associate and Maricopa County Ryan White Part A Program agree to the terms and conditions of this Agreement in order to comply with the use of handling of PHI under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R Part 160 and Part 164, Subpart E (“Privacy Standards”) and the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (“Security Standards”), both as amended from time to time. Unless otherwise provided, all capitalized terms in this Agreement will have the same meaning as provided under the Privacy Standards and Security Standards. Associate and Maricopa County Ryan White Part A Program will comply with the terms of this Agreement for the duration of the Contract and for such other continuing periods as provided in this Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by the Secretary of Health and Human Services that affects Associate’s use or disclosure of PHI, the parties agree to take such reasonable action as is necessary to amend this Agreement in order for Maricopa County Ryan White Part A Program to comply with such final regulation or amendment to final regulation.

Definitions for terms in this Agreement:

1. **Business Associate** means an entity that performs or assists in the performance of a function on behalf of a Covered Entity, which involves the use, or disclosure of Individually Identifiable Health Information as defined in 45 C.F.R § 160.103. The terms “Business Associate” and “Contractor” are synonymous. Notwithstanding this definition, if Contractor does not have access to or create Protected Health Information under this Contract, Contractor is not a Business Associate, and the terms of this Agreement do not apply to Contractor.
2. **Individual** means the individual who is the subject of the Protected Health Information.
3. **Individually Identifiable Health Information or Protected Health Information (“PHI”)** means the health information that is created or received by a Covered Entity; and relates to the physical condition, mental health or other health condition of an Individual, or to the provision of health care to the Individual (including but not limited to the payment for such health care); and identifies or can be used to identify the Individual as defined in 45 C.F.R § 160.103.

It is agreed concerning:

1. **Uses and Disclosures of Protected Health Information.** Associate will use and disclose PHI only for those purposes necessary to perform its duties, obligations and functions under the Contract, or as otherwise expressly permitted in this Agreement or required by other law. Associate will not use or further disclose any PHI in violation of this Agreement. Associate may use PHI to perform data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Associate agrees that any time it provides PHI received from Maricopa County Ryan White Part A Program to a subcontractor or agent to perform Services for Maricopa County Ryan White Part A Program, Associate first will enter into a contract with such subcontractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of PHI as contained in this Agreement.
2. **Associate Use or Disclosure of Protected Health Information for its Own Purposes.** Associate may use or disclose PHI received from Maricopa County Ryan White Part A Program for Associate’s management and administration, or to carry out Associate’s legal responsibilities. Associate may disclose PHI received from Maricopa County Ryan White Part A Program to a third party for such purposes only if:
 - a. The disclosure is required by law; or
 - b. Associate secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by law or for the purpose for which it was disclosed to the recipient; and (iii) notify the Associate of any breaches in the confidentiality of the PHI.
3. **Safeguards.** Associate will implement and maintain appropriate safeguards to prevent any use or disclosure of PHI not otherwise permitted in this Agreement. Associate also will implement administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any electronic protected health information (“e-PHI”), if any, that Associate creates receives, maintains, and transmits on behalf of Maricopa County Ryan White Part A Program. Upon request of Maricopa County Ryan White Part A Program, Associate will provide evidence to

Maricopa County Ryan White Part A Program that these safeguards are in place and properly managed.

4. **Reports of Improper Use or Disclosure of Protected Health Information and of Security Incidents and Breaches.** Associate will report in writing to Maricopa County Ryan White Part A Program any use or disclosure of PHI not permitted by the contract between Associate and Maricopa County Ryan White Part A Program within five business days of Associate's learning of such use or disclosure.

Associate also will report in writing to Maricopa County Ryan White Part A Program any Security Incident of which Associate becomes aware within five business days of Associate learning of such use or disclosure. Specifically, Associate will report to Maricopa County Ryan White Part A Program any successful unauthorized access, use, disclosure, modification, or destruction of e-PHI or interference with system operations in an information system containing e-PHI of which Associate becomes aware. Associate also will report the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify, or destroy e-PHI or interfere with system operations in an information system containing e-PHI, of which Associate becomes aware, provided that: (i) such reports will be provided only as frequently as the parties mutually agree, but no more than once per month; and (ii) if the definition of "Security Incident" under the Security Standards is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy e-PHI, the portion of this Section 4 addressing the reporting of unsuccessful, unauthorized attempts will no longer apply as of the effective date of such amendment.

5. **Obligations Regarding Associate Personnel.** Associate will appropriately inform all of its employees, agents, representatives and members of its workforce ("Associate Personnel"), whose services may be used to satisfy Associate's obligations under the Contract and this agreement of the terms of this Agreement. Associate represents and warrants that the Associate Personnel are under legal obligation to Associate, by contract or otherwise, sufficient to enable Associate to fully comply with the provisions of this Agreement. Associate will maintain a system of sanction for any Associate Personnel who violates this Agreement.

6. **Access to Protected Health Information.**

- a. **Maricopa County Ryan White Part A Program Access.** Within five business days of a request by Maricopa County Ryan White Part A Program for access to PHI received from Maricopa County Ryan White Part A Program, Associate will make requested PHI available to Maricopa County Ryan White Part A Program.
- b. **Patient Access.** If a patient requests access to PHI directly from Associate, Associate can provide the requested PHI to the patient, provided the Associate created or maintains the PHI. The Associate will note in the patient's record whether the requested PHI was provided, per the Associate's privacy policy and procedure. The Associate will also provide a written summary to the Maricopa County Ryan White Part A Program as to the outcome of the patient's request for PHI. However, if the patient requests PHI related to services provided by another Ryan White Part A provider, Associate will, within five business days, forward such request in writing to the Maricopa County Ryan White Part A Program. The Maricopa County Ryan White Part A Program will be responsible for making all determinations regarding the

grant or denial of a patient's request for PHI, and Associate will make no such determinations. Under the direction of the Maricopa County Ryan White Part A Program, the Associate that maintains the requested PHI will be responsible to prepare and deliver the requested PHI records to the patient, provided Associate has possession of the requested records.

7. Amendment of Protected Health Information.

- a. **Maricopa County Ryan White Part A Program Request.** Within five business days of receiving a request from Maricopa County Ryan White Part A Program to amend an individual's PHI received from Maricopa County Ryan White Part A Program, Associate will provide such information to Maricopa County Ryan White Part A Program for amendment. Alternatively, if a Maricopa County Ryan White Part A Program request includes specific information to be included in the PHI as an amendment, Associate will incorporate such amendment within five business days of receipt of the Maricopa County Ryan White Part A Program request.
- b. **Individual Request.** If an individual makes a request to amend PHI directly to Associate, Associate will follow the Associate's privacy policy and procedure for patient request to amend PHI. The Associate shall provide a written summary to the Maricopa County Ryan White Part A Program of the outcome of the individual's request to amend PHI.

8. Accounting of Disclosures; Requests for Disclosure.

- a. **Disclosure Records.** Associate will keep a record of any disclosure of PHI received from Maricopa County Ryan White Part A Program that Associate makes to its agents, subcontractors or other third parties other than:
 - (1) Disclosures to health care providers to assist in the treatment of patients;
 - (2) Disclosures to others to assist Maricopa County Ryan White Part A Program in paying claims;
 - (3) Disclosures to others to assist Maricopa County Ryan White Part A Program in conducting its health care operations, as defined in 45 C.F.R. § 164.501; or
 - (4) Disclosures made pursuant to an individual's Authorization.

Associate will maintain this disclosure record for six years from the termination of this Agreement.

- b. **Data Regarding Disclosures.** For each disclosure for which it is required to keep a record under paragraph 8(a), Associate will record and maintain the following information:
 - (1) The date of disclosure;
 - (2) The name of the entity or person who received the PHI and the address of such entity or person, if known.
 - (3) A description of the PHI disclosed; and
 - (4) A brief statement of the purpose of the disclosure.
- c. **Provision to Maricopa County Ryan White Part A Program.** Associate will provide to Maricopa County Ryan White Part A Program its record of disclosures under paragraph 8(a), if any, within thirty days of each disclosure. Within five business days of receiving a notice from

Maricopa County Ryan White Part A Program of an individual's request for an accounting, Associate also will provide to Maricopa County Ryan White Part A Program its disclosure record.

- d. **Patient Request to Associate.** If a Patient requests an accounting of disclosures directly from Associate, Associate will forward the request to Maricopa County Ryan White Part A Program within five business days of Associate's receipt of the request, and will make its records of disclosures available to Maricopa County Ryan White Part A Program as otherwise provided in this Section. Maricopa County Ryan White Part A Program will be responsible to prepare and delivery the records of disclosure to the Patient. Associate will not provide an accounting of its disclosure directly to the individual. .

9. **Access to Books and Records.**

- a. **Maricopa County Ryan White Part A Program Access.** Associate will, within five business days of Maricopa County Ryan White Part A Program written request, make available during normal business hours at Associate's offices, all records, books, agreements, policies and procedures relating to the use or disclosure of PHI received from Maricopa County Ryan White Part A Program for the purpose of allowing Maricopa County Ryan White Part A Program or its agents or auditors to determine Associate's compliance with this Agreement.
- b. **Government Access.** Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Associate on behalf of, Maricopa County Ryan White Part A Program available to the Secretary of the Department of Health and Human Services to the extent required for determining compliance with the Privacy Standards. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Associate or Maricopa County Ryan White Part A Program as a result of this Section.

10. **Termination.** Maricopa County Ryan White Part A Program immediately may terminate the Contract, if any, and this Agreement upon written notice to Associate if Maricopa County Ryan White Part A Program determines that the Associate or subcontractor(s) or agent(s) of Associate has breached a material term of this Agreement. Alternatively, Maricopa County Ryan White Part A Program may elect to provide Associate with written notice of Associate's or subcontractor(s)' or agent(s)' of Associate breach of any term or condition of this Agreement and afford Associate the opportunity to cure the breach to the satisfaction of Maricopa County Ryan White Part A Program within thirty business days of the date of such notice. If Associate fails to timely cure the breach, as determined by Maricopa County Ryan White Part A Program at its sole discretion, Maricopa County Ryan White Part A Program may terminate the Contract and this Agreement.

11. **Return or Destruction of Protected Health Information.**

- a. **Return of PHI; Destruction.** Within thirty business days of termination of the Contract or this Agreement, Associate will return to Maricopa County Ryan White Part A Program all PHI received from Maricopa County Ryan White Part A Program or created or received by Associate on behalf of Maricopa County Ryan White Part A Program that Associate maintains in any form or format. Associate will not maintain or keep in any form or format any portion

of such PHI. Alternatively, Associate may, upon Maricopa County Ryan White Part A Program written consent, destroy all such PHI and provided written documentation of such destruction. The requirement to return or destroy such PHI will apply to all agents or subcontractors of Associate. Associate will be responsible for recovering any PHI from such agents or subcontractors. If Associate cannot obtain the PHI from any agent or subcontractor, Associate will so notify Maricopa County Ryan White Part A Program and will require that such agents or subcontractors directly return PHI to Maricopa County Ryan White Part A Program or otherwise destroy such PHI, subject to the terms of this Section.

- b. **Alternative Measures.** If Associate believes that returning or destroying PHI at the termination of the Contract or this Agreement is infeasible, it will provide written notice to Maricopa County Ryan White Part A Program within five business days of the effective date of termination of this Agreement. Such notice will set forth the circumstances that Associate believes makes the return or destruction of PHI infeasible and the alternative measures that Associate recommends for assuring the continued confidentiality and security of the PHI. Maricopa County Ryan White Part A Program promptly will notify Associate of whether it agrees that the return or destruction of PHI is infeasible. If Maricopa County Ryan White Part A Program agrees that return or destruction of PHI is infeasible, Associate agrees to extend all protections, limitations and restrictions of this Agreement to Associate's use or disclosure of PHI retained after termination of this Agreement and to limit further uses or disclosures to those purposes that make the return or destruction of the PHI infeasible. Any such extended protections, limitations and restrictions will apply to any agents or subcontractors of Associate for whom return or destruction of PHI is determined by Maricopa County Ryan White Part A Program to be infeasible. If Maricopa County Ryan White Part A Program does not agree that the return or destruction of PHI from Associate or its agents or subcontractors is infeasible, Maricopa County Ryan White Part A Program will provide Associate with written notice of its decision, and Associate, its agents and subcontractors will proceed with the return or destruction of the PHI pursuant to the terms of this Section within fifteen business days of the date of Maricopa County Ryan White Part A Program notice.

12. **Restrictions on Use or Disclosure of Protected Health Information.** If Maricopa County Ryan White Part A Program advises Associate of any changes in, or restrictions to, the permitted use or disclosure of PHI received from Maricopa County Ryan White Part A Program, Associate will restrict the use or disclosure of such PHI consistent with the Maricopa County Ryan White Part A Program instructions.

13. **Mitigation Procedures.** Associate agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of PHI received from Maricopa County Ryan White Part A Program in a manner contrary to this agreement or the Privacy Standards.

14. **Compliance with the HITECH Act.** Associate will comply with the requirements of Title XII, Subtitle D of this Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C §§ 17921-17954, which are applicable to Associates, and will comply with all regulations issued by Department of Health and Human Services (HHS) to implement these referenced statutes, as of the date by which Associates are required to comply with such referenced statutes and HHS regulations.

Associate will also comply with Section 13402 of the HITECH Act, codified at 42 U.S.C. § 17932, and with all regulations issued by HHS to implement this statute, as of the date by which Associates are required to comply with such referenced statutes and HHS regulations. Associate will make a report to the Maricopa County Ryan White Part A Program of any breach of unsecured protected health information, as required by 42 U.S.C. §17932(b), within five business days of Associate's discovery of the breach. Associate will indemnify Maricopa County Ryan White Part A Program for any reasonable expenses Maricopa County Ryan White Part A Program incurs in notifying individuals of a breach caused by Associate or its subcontractors or agents.

15. Miscellaneous.

- a. **Compliance with Laws.** The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Should such developments occur, and upon either Party's good faith request, the other Party agrees to enter good faith negotiations concerning the terms of amendment to this Agreement.
- b. **Construction of Terms.** The terms of this Agreement will be construed in light of any applicable interpretation or guidance on the Privacy Standards and Security Standards issued by the Department of Health and Human Services.
- c. **No Third Party Beneficiaries.** Nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities, whatsoever.
- d. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with regard to the Privacy Standards and Security Standards, there are no understandings or agreements relating to this Agreement that are not fully expressed in this Agreement and no change, waiver or discharge of obligations arising under this Agreement will be valid unless in writing and executed by the party against whom such change, waiver or discharge is sought to be enforced.
- e. **Written Agreement.** This Agreement will be considered an agreement to the Contract, which is incorporated as though fully set forth within the Contract. This Agreement will govern in the event of conflict or inconsistency with any provision of Contract.
- f. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement.
- g. **Facsimile and Electronic Signatures.** Facsimile and electronic signatures shall be deemed to be original signatures for all purposes of this Agreement.
- h. **Notices.** Any notices required under this agreement will be sent to the parties at the following address first class mail, fax, email or hand delivery:



Maricopa County
Ryan White Part A Program
301 West Jefferson Street
Phoenix, AZ 85003 – 2143
602.372.7091
(Fax) 602.506.6300

BUSINESS ASSOCIATE AGREEMENT
FOR RELEASE OF INFORMATION TO THIRD PARTIES

1. _____ (“Associate”) is a business associate of Maricopa County Ryan White Part A Program pursuant to the agreement between Associate and Maricopa County Ryan White Part A Program dated _____ (“Agreement”). Pursuant to that Agreement, Associate is required to comply with the requirements for the use and handling of Protected Health Information (“PHI”) from Maricopa County Ryan White Part A Program as set forth in the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. 164.501 et. seq. as amended from time to time (“Privacy Standards”).
2. Associate is permitted to disclose PHI to _____ (“Recipient”) for the necessary management and administration of Associate and to carry out the legal responsibilities of the Associate, provided that Recipient provides Associate with the following assurances for Recipient’s use and disclosure of PHI.
3. Associate seeks to disclose PHI to Recipient for the following management, administration or legal responsibilities of Associate: _____.
4. The Disclosure of PHI to Recipient is conditioned upon Recipient’s assurance that, and Recipient agrees that it will:
 - a. Hold the PHI confidentially and make no redisclosure to any third party without Associate’s express advance written consent;
 - b. Use or disclose the PHI only as required by law or for the purposes set forth above; and
 - c. Notify Associate in writing of any breaches in the confidentiality of the PHI within three days of discovery of any such breach.

ASSOCIATE

By: _____
SIGNATURE DATE

PRINTED NAME AND TITLE

RECIPIENT

By: _____
SIGNATURE DATE

PRINTED NAME AND TITLE