

**AMENDMENT NO. 1 TO THE
DISASTER RECOVERY STORAGE SERVICE
SERVICE LEVEL AGREEMENT (SLA)
BETWEEN
THE STATE OF WASHINGTON, OFFICE OF THE SECRETARY OF STATE,
DIVISION OF ARCHIVES & RECORDS MANAGEMENT
AND
WASHINGTON STATE UNIVERSITY
HEALTH AND WELLNESS SERVICES**

THIS AMENDMENT NO. 1 to that certain Service Level Agreement (“SLA”) for Disaster Recovery Storage Services (“DRSS”) is entered between Washington State University by and through its Health and Wellness Services unit (“Customer”) and the Washington Office of the Secretary of State, Division of Archives & Records Management (“OSOS”).

RECITALS:

WHEREAS, Customer and OSOS have previously executed the SLA on or about January 11, 2010, for the purpose of OSOS providing DRSS to Customer; and

WHEREAS, Customer and OSOS have determined it to be in the best interest of the parties to modify certain terms of the SLA, and to that end, execute this Amendment No. 1 thereto.

NOW, THEREFORE, the parties agree as follows:

1. **Compliance with Law**. The Section of the SLA entitled “Treatment of Assets” is hereby modified to include the following:

The property furnished by Customer may only be used as specifically provided in this SLA. Both parties shall comply with all laws and policies regarding protection of privacy of records, including but not limited to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”) and implementing regulations.

2. **Business Associate Agreement**. A new Section and Attachment shall be added to the SLA, as follows (the Attachment is attached to this Amendment No. 1):

Business Associate Agreement

This SLA is subject to the Business Associate Agreement, attached to this SLA as Attachment 1.

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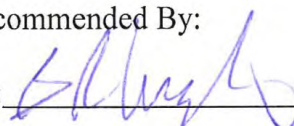
3. **Remainder of SLA Unchanged.** All other terms and conditions of the SLA shall remain unchanged and in full force and effect.


IT IS SO AGREED.

WASHINGTON STATE UNIVERSITY

OFFICE OF THE SECRETARY OF STATE

Recommended By:

By:  9/12/14

By: 

Name: Bruce R. Wright, MD

Name: STEVE EXCELL

Title: Executive Director

Title: STATE ARCHIVIST

Date: 9/12/14

Date: 09-05-14

Approved By:

By: 

Name: Amanda Owen

Title: Contracts Manager, Finance and Admin

Date: 10/17/14

ATTACHMENT 1

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "B.A. Agreement"), dated October 17, 2014, ("Effective Date") is entered into by and between **the Washington Office of the Secretary of State, Division of Archives & Records Management** (the "Business Associate") and **Washington State University by and through its Health and Wellness Services unit** (the "Covered Entity") (each a "Party" and collectively the "Parties").

The Parties have agreed that Business Associate provides archival services of potentially protected health information (the "Services") for or on behalf of the Covered Entity in accordance with the Disaster Recovery Storage Service – Service Level Agreement (the "Agreement") between Business Associate and Covered Entity and that provision of the Services may involve PHI (as defined in Section 1.5). The purpose of this B.A. Agreement is to set forth the obligations of Business Associate with respect to such PHI in accordance with applicable federal law.

The Parties hereby agree as follows:

1. DEFINITIONS

1.1 Unless otherwise specified in this B.A. Agreement, all capitalized terms used in this B.A. Agreement not otherwise defined have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA") and ARRA (as defined in Section 1.2), as each is amended from time to time.

1.2 "ARRA" shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations. References in this B.A. Agreement to a section or subsection of title 42 of the United States Code are references to provisions of ARRA, and any reference to provisions of ARRA in this B.A. Agreement shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective.

1.3 "Compliance Date" shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA.

1.4 "Electronic Protected Health Information" ("ePHI") shall mean PHI as defined in Section 1.5 that is transmitted or maintained in electronic media.

1.5 "PHI" shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the Protected Health Information received from, or received or created on behalf of, Covered Entity by Business Associate pursuant to the Agreement.

1.6 "Privacy Rule" shall mean the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

2. RESPONSIBILITIES OF BUSINESS ASSOCIATE

With regard to its use and/or disclosure of PHI, Business Associate agrees to:

- (a) use and/or disclose PHI only as necessary to provide the Services, specifically as permitted or required by this B.A. Agreement and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) or as otherwise Required by Law;
- (b) implement and use appropriate technical, physical and administrative safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this B.A. Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, maintains, or transmits on behalf of the Covered Entity; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316;
- (c) promptly report to Covered Entity: (i) any use or disclosure of PHI of which it becomes aware that is not permitted by this B.A. Agreement; and/or (ii) any Security Incident of which Business Associate becomes aware;
- (d) without unreasonable delay and in no case later than sixty (60) calendar days after discovery, Business Associate shall notify Covered Entity of a Breach of any Unsecured PHI all in accordance with 42 U.S.C. § 17932(b) as of its Compliance Date;
- (e) require all of its subcontractors and agents that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate; to the extent that Business Associate provides ePHI to a subcontractor or agent, it shall require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the ePHI;
- (f) make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule;
- (g) within thirty (30) days after receiving a written request from Covered Entity, make available information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual as provided in 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with 42 U.S.C. 17935(c), and when directed by Covered Entity, make that accounting directly to the Individual;
- (h) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that is not permitted by the requirements of this B.A. Agreement;
- (i) provide access (at the request of the Covered Entity, and in the time and manner designated by Covered Entity) to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in accordance with the requirements of 45 C.F.R. § 164.524;
- (j) in the event that Business Associate in connection with the Services 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 Covered Entity, and in the time and manner designated by Covered Entity) of the PHI, to Covered Entity or, when and as directed by Covered Entity, 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;
- (k) to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within thirty (30) days of a written request by Covered Entity, PHI for amendment and incorporate any amendments to the PHI as directed by Covered Entity, all in accordance with 45 C.F.R. § 164.526;
- (l) 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 shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date;
- (m) 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; and
- (n) not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.

- (o) 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.

3. TERM, TERMINATION AND DAMAGES

3.1 Term. The Term of this B.A. Agreement shall be effective as of execution by both parties and shall terminate upon the final expiration or termination of the Agreement unless earlier terminated in accordance with Section 3.2 of this B.A. Agreement.

3.2 Termination.

(a) Upon Covered Entity's determination of a breach of a material term of this B.A. Agreement by Business Associate, Covered Entity may terminate this B.A. Agreement.

(b) Notwithstanding Section 3.2(a), as of the Compliance Date of 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 B.A. 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 cure reasonably satisfactory to the non-breaching Party, then the non-breaching Party may do the following:

- (i) if feasible, terminate this B.A. Agreement and the Agreement; or
- (ii) if termination of this B.A. Agreement or the Agreement is infeasible, report the problem to HHS.

3.3 Effect of Termination or Expiration. Within thirty (30) days after the termination or expiration of this B.A. Agreement, Business Associate shall return or destroy all PHI, in accordance with Covered Entity's directions, if feasible to do so, including all PHI in possession of Business Associate's subcontractors. If return or destruction of the PHI is not feasible, Business Associate shall notify Covered Entity in writing of the reasons return or destruction is not feasible and, if Covered Entity agrees, Business Associate shall extend any and all protections, limitations and restrictions contained in this B.A. Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination or expiration of this B.A. Agreement, and to limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

4. MISCELLANEOUS

4.1 Incorporation into Agreement. The parties hereby agree that this B.A. Agreement is incorporated into and made a part of the Agreement.

4.2 Construction of Terms. To the extent they are not clear, the terms of this B.A. Agreement shall be construed to allow for compliance by both Parties with HIPAA and ARRA.

4.3 No Third Party Beneficiaries. Nothing in this B.A. Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

4.4 Governing Law. This B.A. Agreement will be governed by and construed in accordance with the laws of the **Washington**.

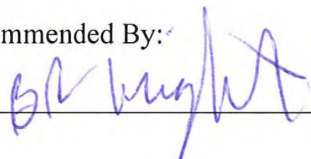
4.5 Counterparts. This B.A. Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

IN WITNESS WHEREOF, each of the undersigned has caused this B.A. Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement on behalf of the Party and as of the Effective Date.

WASHINGTON STATE UNIVERSITY

OFFICE OF THE SECRETARY OF STATE

Recommended By:
By: 

Name: Bruce R. Wright, MD

Title: Executive Director

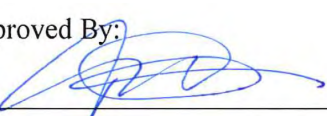
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Name: STEVE EXCELL

Title: STATE ARCHIVIST

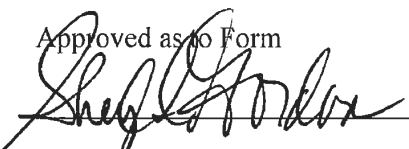
Date: 09-05-14

Approved By:
By: 

Name: Amanda Owen

Title: Contracts Manager, Finance and Admin

Date: 10/17/14

Approved as to Form

Assistant Attorney General

10-22-14
Date