

BUSINESS ASSOCIATE - SUBCONTRACTOR AGREEMENT

THIS BUSINESS ASSOCIATE – SUBCONTRACTOR AGREEMENT (this “Agreement”) governs the relationship between WorkCare, Inc. (“Business Associate”) and any of its independent contractors that is a Subcontractor as that term is used in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

The Effective Date of this Agreement shall be the earlier of the date that the parties entered into an agreement by which Subcontractor provides services to Business Associate or the date on which a party provided to the other party any Protected Health Information (“PHI”) as that term is used in HIPAA.

The parties acknowledge that this Agreement is required by HIPAA and Title XIII of the American Recovery and Reinvestment Act of 2009, which is also known as the Health Information Technology for Economic and Clinical Health Act (“HITECH”), as HIPAA and HITECH impose obligations on the parties with respect to PHI.

A. DEFINITIONS

All capitalized terms used in this Agreement shall have the meaning set forth in the HIPAA regulations promulgated in 45 C.F.R. Parts 160 and 164.

B. OBLIGATIONS OF SUBCONTRACTOR

1. Permitted Uses and Disclosures. Subcontractor may only use or disclose Covered Entity’s PHI in accordance with this Agreement or as Required By Law.

2. Security Obligations for PHI. Subcontractor shall implement appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Covered Entity’s electronic PHI as required by the Security Rule.

3. Performance of Covered Entity’s Obligation. To the extent that Subcontractor carries out any of Covered Entity’s or Business Associate’s obligations under the Privacy Rule, Subcontractor shall comply with the requirements of the Privacy Rule that apply to Covered Entity or Business Associate in the performance of such obligation.

4. Use and Disclosure of Minimum Necessary PHI. Subcontractor, when using or disclosing PHI received from, created for, or received by Business Associate on behalf of Covered Entity, must limit PHI to the minimum necessary under HIPAA to accomplish the intended purpose of the use, disclosure, or request.

5. Access to Information. Within ten (10) days of receipt of a request from Covered Entity or Business Associate, Subcontractor shall provide Covered Entity or Business Associate access to PHI maintained by Subcontractor in a Designated Record

Set(s), or as directed by Covered Entity or Business Associate, to an Individual in order to meet the requirements of 45 C.F.R. §164.524.

6. Availability of PHI for Amendment. Within ten (10) days of a request from Covered Entity or Business Associate, Subcontractor shall make any amendment to PHI maintained in a Designated Record Set that is requested by Covered Entity or Business Associate or take any other measures requested by Covered Entity or Business Associate necessary to meet the Covered Entity's obligations under 45 CFR § 164.526.

7. Accounting of Disclosures. Subcontractor shall document disclosures of Covered Entity's PHI and information related to such disclosures as would be required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI. Within ten (10) business days of a request from Covered Entity or Business Associate, Subcontractor shall provide to Covered Entity or Business Associate, as directed by Covered Entity or Business Associate, 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.

8. Reporting Disclosures of PHI. Subcontractor shall report to Business Associate any use or disclosure of PHI not provided for in this Agreement within five (5) business days of Discovery. Subcontractor shall have procedures in place for mitigating, to the extent practicable, any harmful effect known to Subcontractor that arises out of unauthorized uses or disclosures of PHI by Subcontractor.

9. Notification of Security Incident or Breach. Within five (5) business days of Subcontractor's Discovery of a Security Incident or a Breach, Subcontractor shall report the Security Incident or Breach to Business Associate and notification of a Breach shall comply with the requirements of 45 C.F.R. §164.404(c).

10. Agreements with Other Subcontractors. Subcontractor shall enter into a written agreement with any subcontractor to whom Subcontractor provides Covered Entity's PHI or from whom it receives Covered Entity's PHI in which the subcontractor agrees to be bound by the same restrictions and conditions of this Agreement that apply to Subcontractor with respect to such PHI.

11. Availability of Books and Records. Subcontractor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of Health and Human Services (the "Secretary") for purposes of determining Covered Entity's compliance with HIPAA.

C. SUBCONTRACTOR'S PERMITTED USES AND DISCLOSURES OF PHI

1. Permitted Uses or Disclosure. Subcontractor may create, receive, use, maintain or disclose PHI as is necessary to perform its obligations to Business Associate

and in accordance with HIPAA, HITECH, and this Agreement. In addition, Subcontractor may use or disclose PHI for the proper management and administration of Subcontractor or to carry out Subcontractor's legal responsibilities provided that: (a) any disclosure is Required By Law; or (b) Subcontractor has received from any non-party written assurances any PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to such non-party, and that such non-party will notify Subcontractor of any instances of which it is aware in which confidentiality of the PHI has been breached.

2. De-Identification of PHI. Subcontractor may de-identify any PHI received from or created or received on behalf of Covered Entity or Business Associate provided that such de-identification complies with the requirements set forth in the Privacy Rule and Subcontractor notifies Business Associate prior to creating de-identified health information.

3. Use or Disclosure to Provide Data Aggregation Services. Except as otherwise limited by this Agreement, Subcontractor may use PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity, but only if such Data Aggregation services are specifically requested in writing by Covered Entity.

D. RESPONSIBILITIES OF BUSINESS ASSOCIATE

1. Requests for Uses or Disclosures. Business Associate shall not request Subcontractor to use or disclose PHI in any manner that would violate this Agreement, HIPAA, HITECH, or any applicable state or federal law.

2. Notice of Privacy Practices. Business Associate shall provide Subcontractor with notice of Covered Entity's privacy practices provided to Individuals who are the subject of the PHI.

3. Notice of Restrictions. Business Associate shall notify Subcontractor of any restrictions to the use and disclosure of PHI to which Covered Entity has agreed to the extent that such restrictions affect Subcontractor's use or disclosure of PHI.

E. INDEMNIFICATION

Each party (the "Indemnitor") shall defend, indemnify and hold harmless the other party, its employees, and subcontractors (the "Indemnitees") from and against any and all claims, lawsuits, proceedings, losses, damages or expenses, including reasonable attorney's fees and costs, asserted against or incurred by an Indemnitee as a result of or arising out of a breach of this Agreement or violation of applicable law by the Indemnitor, or its subcontractors. The parties' indemnification obligations shall survive termination of this Agreement.

F. TERM AND TERMINATION

1. Term. This Agreement shall be effective from the Effective Date until all PHI provided by or created for Covered Entity and Business Associate is destroyed or returned to Covered Entity or Business Associate, or if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the terms of this Agreement.

2. Breach. If Business Associate believes that Subcontractor has materially breached its obligations under this Agreement or HIPAA, then Business Associate shall provide Subcontractor with an opportunity to cure the breach or violation. If Subcontractor fails to cure the breach or violation to the satisfaction of Business Associate within the specified time period, then Business Associate shall have the right to terminate this Agreement and any other agreement with Subcontractor. If the parties agree that a cure is not feasible, then Business Associate may immediately terminate this Agreement and any other agreement with Subcontractor and may report Subcontractor's breach or violation to the Secretary.

3. Effect of Termination. Upon termination of this Agreement, Subcontractor shall return or destroy all PHI in its possession or the possession of its agents or subcontractors that was created for or received from Covered Entity or Business Associate. If it is infeasible to return or destroy the PHI, Subcontractor, its agents or subcontractors shall continue to extend the protections of this Agreement to such information and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. Subcontractor will not retain any copies of PHI in any form or medium except as required by law.

G. MISCELLANEOUS

1. Relationship of the Parties. The relationship between the parties is that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreement between the parties.

2. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity that is not a party to this Agreement.

3. Successors and Assigns. This Agreement shall be binding on the parties and their successors, but neither party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

4. Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any occasion.

5. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

6. Modification to Comply with Law. Federal and state laws relating to the security and privacy of PHI may require modification of this Agreement to provide for procedures to ensure compliance with such developments. The parties shall take such action as is necessary to amend this Agreement to comply with any such requirements. Either party may terminate this Agreement upon thirty (30) days written notice in the event that the other party does not promptly enter into negotiations to modify this Agreement when requested by such party under this section.

7. Amendment. This Agreement may be amended or modified only in writing signed by the parties.

8. Notice. Any notice to the other party pursuant to this Agreement shall be deemed provided if delivered by hand or sent by a nationally recognized overnight mail delivery service.

9. Governing Law. To the extent that federal law does not apply, this Agreement shall be governed in all respects by the laws of the State of California without regard to principles of conflicts of laws.

10. Counterparts. This Agreement may be executed in counterparts with the same effect as if the signatures on such counterparts appeared on one document, and each such counterpart shall be deemed to be an original.