

BUSINESS ASSOCIATE AGREEMENT

In connection with the Underlying Contract (as defined below), which requires certain selected health information networks identified in such Underlying Contract (each such health information network, being the “**Business Associate**”), to be provided with, to have access to and/or disclose Protected Health Information (as defined below) that is subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations codified at 45 C.F.R. parts 160-164, as maybe amended from time to time (“**HIPAA**”), this Business Associate Agreement (the “**BA Agreement**”) is made and entered into by and between Business Associate and the individual or entity that executes the Underlying Contract and which is a covered entity as defined under HIPAA (“**Covered Entity**”), in connection with Business Associate’s receipt, use, disclosure and creation of Protected Health Information (or “**PHI**”, as defined below) in connection with the Underlying Contract. Business Associate and Covered Entity may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.” For the avoidance of doubt, this BA Agreement shall not apply with respect to an individual or entity that executes the Underlying Contract and which is not a covered entity as defined under HIPAA.

1. DEFINITIONS.

- a) “**Breach**” has the same meaning as the term “Breach” as defined in 45 C.F.R. § 164.402.
- b) “**Breach Notification Rule**” means the rules found in 45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, as amended.
- c) “**Business Day**” means any day of the week, with the exclusion of: (i) Saturdays and Sundays; (ii) federal holidays; (iii) New York State holidays; (iv) the day after Thanksgiving; and (v) December 24th.
- d) “**Data Aggregation Services**” means, with respect to PHI created or received by Business Associate in its capacity as the business associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another HIPAA-covered entity, to permit data analyses that relate to health care operations of the respective covered entities.
- e) “**Designated Record Set**” has the same meaning as the term “Designated Record Set” as defined in 45 C.F.R. § 164.501.
- f) “**DOH**” means the New York State Department of Health.
- g) “**Electronic Protected Health Information**” or “**Electronic PHI**” has the same meaning as the term “electronic protected health information” as defined in 45 C.F.R. § 160.103.
- h) “**Individual**” has the same meaning as the term “Individual” as defined in 45 C.F.R. § 160.103 and shall, in accordance with 45 C.F.R. § 164.502(g), include a person who qualifies as a “Personal Representative” in accordance with HIPAA.

- i) **“Medicaid Confidential Data”** or **“MCD”** means any information or data received directly or indirectly from the DOH about individuals who have applied for or received Medicaid benefits, including Medicaid claims data, names and addresses, diagnoses, medical services, and other personally identifiable information about Medicaid beneficiaries or Medicaid applicants. MCD may include PHI.
- j) **“Part 2 Program”** has the same meaning as the term “Part 2 Program” as defined in 42 C.F.R. § 2.11.
- k) **“Privacy Rule”** means the rules found in 45 CFR Part 160 and Subparts A and E of 45 C.F.R. of Part 164, as amended.
- l) **“Protected Health Information”** or **“PHI”** has the same meaning as the term “Protected Health Information” as defined in 45 C.F.R. § 160.103. “Protected Health Information” includes, without limitation, “Electronic Protected Health Information” as defined above.
- m) **“Reportable Event”** means a use or disclosure of Covered Entity’s PHI, which Business Associate must report to Covered Entity under Section 2(c) of this BA Agreement.
- n) **“Required By Law”** has the same meaning as the term “Required by Law” as defined in 45 C.F.R. § 164.103.
- o) **“Secretary”** means the Secretary of the Department of Health and Human Services or their designee.
- p) **“Security Incident”** has the same meaning as the term “Security Incident” as defined in 45 C.F.R. § 164.304.
- q) **“Security Rule”** means the rules found in 45 CFR Part 160 and Subparts A and C of 45 C.F.R. of Part 164, as amended.
- r) **“SHIN-NY SOPs”** shall mean the set of standard operating procedures and policies, including technical standards, adopted via the Statewide Collaboration Process, related to operation of the Statewide Health Information Network for New York, or SHIN-NY.
- s) **“Statewide Collaboration Process”** has the same meaning as the term “Statewide Collaboration Process” as defined in the Underlying Contract.
- t) **“Subcontractor”** has the same meaning as the term “Subcontractor” as defined in 45 C.F.R. § 160.103.
- u) **“Underlying Contract”** means the Statewide Common Participation Agreement entered into by and between Business Associate and Covered Entity.
- v) **“Unsecured Protected Health Information”** or **“Unsecured PHI”** has the same meaning as the term “Unsecured Protected Health Information” as defined in 45 C.F.R. § 164.402.

w) **“Unsuccessful Security Incident”** means a Security Incident that does not result in unauthorized access, use, disclosure, modification or destruction of PHI including, for example, and not for limitation, pings on Business Associate’s firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or any combination of the foregoing, so long as no such incident results in unauthorized access, use or disclosure of Electronic PHI.

2. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

a) Use and Disclosure. Business Associate agrees not to use or disclose PHI other than as permitted or required by the Underlying Contract, this BA Agreement, the SHIN-NY SOPs or as Required By Law. Business Associate shall comply with the provisions of this BA Agreement relating to the privacy and security of PHI and all present and future provisions of HIPAA that relate to the privacy and security of PHI and that are applicable to Business Associate. Without limiting the foregoing, to the extent Business Associate will carry out one or more of the Covered Entity’s obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

b) Appropriate Safeguards and Security Requirements. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule (with respect to Electronic PHI) to prevent the use or disclosure of PHI other than as provided for by this BA Agreement. Without limiting the generality of the foregoing sentence, Business Associate will:

(i) Implement administrative (45 C.F.R. § 164.308), physical (45 C.F.R. § 164.310), and technical safeguards (45 C.F.R. § 164.312) that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI as required by the Security Rule; and

(ii) Ensure that any Subcontractor to whom Business Associate provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect Electronic PHI and comply with the requirements of Section 2(a) of this BA Agreement.

c) Reportable Events.

(i) Business Associate shall report to Covered Entity (A) any Breach of Covered Entity’s Unsecured PHI of which it becomes aware; (B) any Security Incident involving Covered Entity’s PHI of which it becomes aware; or (C) any other use or disclosure of Covered Entity’s PHI not provided for in this BA Agreement of which it becomes aware, provided however, that the Parties agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice or report to Covered Entity shall be required.

(ii) Business Associate shall provide Covered Entity with notice of the applicable Reportable Event promptly after Business Associate becomes aware of the Reportable Event, and in no event shall Business Associate provide such notice more than ten (10) Business

Days after becoming aware of such event, provided that such notice shall be provided sooner if required by applicable law.

(iii) Any required notice of a Reportable Event shall include, to the extent known, (A) the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Reportable Event; (B) the date the Reportable Event occurred; (C) any corrective actions Business Associate took or will take with respect to such Reportable Event; and (D) any other relevant information regarding the Reportable Event, including the cause of such Reportable Event. If any such information is not known as of the date by which Business Associate must report the Reportable Event, Business Associate shall promptly provide Covered Entity with an updated report containing the necessary information no later than ten (10) Business Days after Business Associate obtains such information.

d) Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its employees, officers, Subcontractors or agents in violation of the requirements of this BA Agreement (including, without limitation, any Security Incident or Breach of Unsecured Protected Health Information).

e) Subcontractors. Business Associate shall ensure that any agent, including any Subcontractor, to whom Business Associate provides PHI received from, or created, maintained, received or transmitted by, Business Associate on behalf of Covered Entity agrees in writing to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information.

f) Access to Designated Record Sets. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide Covered Entity with access, at the request of Covered Entity, to PHI in a Designated Record Set within seven (7) Business Days after Covered Entity requests access to such PHI. Any such access shall be provided in the manner necessary to enable Covered Entity to meet applicable requirements under 45 C.F.R. § 164.524.

g) Amendments to Designated Record Sets. To the extent Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs within seven (7) Business Days after Covered Entity directs Business Associate to make such amendment. Any such amendment shall be made in the manner necessary to enable Covered Entity to meet applicable requirements under 45 C.F.R. § 164.526.

h) Access to Books and Records. Business Associate agrees to make its internal practices, books, and records, including policies and procedures, 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, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

i) Accountings. Business Associate agrees to document such 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 HIPAA.

j) Requests for Accountings. Business Associate agrees to provide to Covered Entity, within seven (7) Business Days of Business Associate's receipt of a request by Covered Entity, information collected in accordance with Section 2(i) of this BA Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA.

k) Requests Directly to Business Associate. If an Individual makes a request for access to a Designated Record Set (Section 2(f)), an amendment(s) to PHI in a Designated Record Set (Section 2(g)), or an accounting (Section 2(j)) directly to Business Associate, Business Associate shall notify Covered Entity of the request within seven (7) Business Days of Business Associate's receipt of such request. Covered Entity will be solely responsible for approving or disapproving any such request for access to the PHI, and Business Associate or its agents or Subcontractors will comply with Covered Entity's directions regarding such requests. Notwithstanding the foregoing, Covered Entity hereby agrees that Business Associate may provide Individuals with access to their own PHI via a portal or other mechanism to the extent such access occurs in accordance with the requirements of the Underlying Contract and the SHIN-NY SOPs, in which case no further notice to Covered Entity is required.

l) Offshoring. Business Associate shall not receive, process, transfer, handle, store or access Covered Entity's PHI out of the United States and its territories without the prior express written authorization of Covered Entity.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

a) Underlying Contract. Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Contract. Except as permitted under Sections 3(b), (c), (d) and (e) of this BA Agreement, Business associate may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity.

b) Data Aggregation Services. Except as otherwise limited in this BA Agreement, Business Associate may provide Data Aggregation Services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

c) De-Identified Data Sets. Business Associate may create de-identified data sets using PHI received from Covered Entity provided Business Associate complies with 45 C.F.R. § 164.514 and the SHIN-NY SOPs with respect to the creation of such data set and the use and disclosure of such de-identified data.

d) Use for Administration of Business Associate. Except as otherwise limited in this BA Agreement, Business Associate may use the PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided such uses are permitted under the Privacy Rule.

e) Disclosure for Administration of Business Associate. Except as otherwise limited in this BA Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that (i) any such disclosures are Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. OBLIGATIONS OF COVERED ENTITY.

a) Privacy Notice. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

b) Changes of Permission of Individual. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes affect Business Associate's use or disclosure of PHI.

c) Restrictions on Use or Disclosure. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

d) Permissible Requests by Covered Entity. Except as set forth in Section 3 of this BA Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. MEDICAID CONFIDENTIAL DATA.

a) Applicability. If a Party discloses MCD to the other Party, the Parties shall abide by the requirements of Appendix A.

6. QUALIFIED SERVICE ORGANIZATION AGREEMENT

a) Applicability. The provisions of this Section 6 shall apply only in the event that Covered Entity is a Part 2 Program, in which case such provisions shall be known as the "Qualified Service Organization Agreement" between the Parties. In the event Covered Entity is a Part 2 Program, Covered Entity shall provide notice to Business Associate of the applicability of 42 C.F.R. Part 2 to Covered Entity in accordance with the requirements of the Underlying Contract and the SHIN-NY SOPs.

b) Part 2 Acknowledgment. Business Associate acknowledges that, in receiving, storing, processing or otherwise dealing with any information about patients in any alcohol and drug abuse treatment program operated by Covered Entity, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

c) Judicial Proceedings. Business Associate agrees to resist in judicial proceedings any efforts to obtain access to any patient identifying information subject to 42 C.F.R Part 2 and pertaining to substance use disorder diagnosis, treatment or referral for treatment, except as permitted under 42 C.F.R. Part 2.

7. TERM AND TERMINATION.

a) Term. This BA Agreement shall be effective as of the effective date of the Underlying Contract.

b) Termination. This BA Agreement shall terminate as of the date the Underlying Contract terminates or expires.

c) Effect of Termination.

(i) Except as provided in Section 7(c)(ii), upon termination of this BA Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate.

(ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this BA Agreement to such PHI and limit further uses and disclosure of such PHI in accordance with the terms of this BA Agreement, for so long as Business Associate maintains such PHI.

8. INDEMNIFICATION.

a) The indemnification and limitation of liability provisions applicable to this BA Agreement are set forth in the Underlying Contract.

9. COORDINATION OF BUSINESS ASSOCIATE AND COVERED ENTITY.

a) Investigation. The Parties shall reasonably cooperate and coordinate with each other in the investigation of any violation of the requirements of this BA Agreement and/or any Security Incident or Breach.

b) Regulatory References. Any reference in this BA Agreement to a section in HIPAA or other applicable laws means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

c) Amendment. This BA Agreement may be amended in accordance with the Statewide Collaboration Process. If an amendment to the BA Agreement is approved through such process, the amendment shall become effective on the effective date identified as part of such process, and such amendment shall be binding on the Parties without any further action by the Parties. The Parties acknowledge and agree that the Statewide Collaboration Process will be used to modify this BA Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA.

d) Survival. Notwithstanding any other provision of this BA Agreement to the contrary, the terms of this Agreement shall survive its termination and continue indefinitely solely with respect to any PHI Business Associate retains in accordance with this BA Agreement.

e) Interpretation. Any ambiguity in this BA Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA. In event of any inconsistency or conflict between this BA Agreement and the Underlying Contract, the terms and conditions of this BA Agreement shall govern and control.

f) No Third-Party Beneficiaries. Except as expressly stated herein or in the Privacy Rule, Business Associate and Covered Entity do not intend to create any rights in any third parties. Nothing in this BA Agreement shall confer upon any person other than Business Associate and Covered Entity and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

g) Applicable Law. This BA Agreement shall be governed under the laws of the State of New York, without regard to choice of law principles.

h) Notices. All notices, requests and demands or other communications to be given under this BA Agreement to a Party shall be made in accordance with the notice requirements set forth in the Underlying Contract.

i) Terms. The terms of this Agreement are hereby incorporated into the Underlying Contract and supplement and/or amend the Underlying Contract as required (and only as required) to allow Covered Entity to comply with HIPAA and other applicable laws. The terms of the Underlying Contract that are not modified by this BA Agreement shall remain in full force and effect in accordance with the terms thereof. The Underlying Contract, this BA Agreement, the SHIN-NY SOPs and any amendments thereto, constitute the entire agreement of the Parties with respect to the subject matter contained herein.

[The remainder of this page intentionally left blank; signatures on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Business Associate Agreement to be executed by their respective authorized signatories on the date first below written.

PARTICIPANT

[]:

Signature: _____

Name: : _____

Title: : _____

Address: _____

Email: : _____

HEALTH INFORMATION NETWORKS

New York eHealth Collaborative, Inc.:

Signature: _____
Signed by:  7C6360F75F6249A...

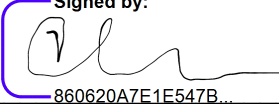
Name: David Horrocks

Title: Chief Executive Officer

Address: 99 Washington Ave., Suite 1750
Albany, NY 12210

Email: dhorrocks@nyehealth.org

Bronx RHIO, Inc.:

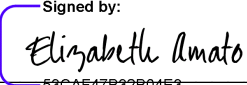
Signed by:

Signature: _____
Name: Charles Scaglione
Title: Executive Director
Address: 1776 Eastchester Rd., Suite 200,
Bronx, NY 10461
Email: cscaglio@bronxrhio.org

Greater Rochester Regional Health Information Organization:


Signed by:

Signature: _____
Name: Marlene Bessette
Title: CEO
Address: 200 Canal View Blvd, Ste. 200
Rochester, NY 14623
Email: marlene.bessette@grrhio.org

HealtheConnections, Inc.:

Signed by:

Signature: _____
Name: Elizabeth Amato
Title: President & CEO
Address: 443 N. Franklin Street, Suite 001
Syracuse, NY 13204
Email: eamato@healtheconnections.org

Healthix, Inc.:

Signature: 
3D46D6E5C3AD4B0...

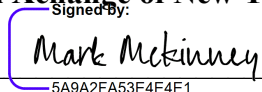
Name: Todd Rogow

Title: President & CEO

Address: 462 7th Ave.
New York, NY 10018

Email: trogow@healthix.org

Healthcare Information Xchange of New York, Inc. (d/b/a Hixny):

Signature: 
5A9A2FA53E4E4E1...

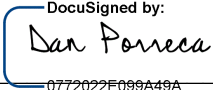
Name: Mark McKinney

Title: CEO

Address: 80 Wolf Road, Suite 500
Albany, NY 12205

Email: mmckinney@hixny.org

HEALTHeLINK, Inc:

Signature: 
0772022E099A49A...

Name: Dan Porreca

Title: President & CEO

Address: 2475 George Urban Blvd., Suite 202
Depew, NY 14043

Email: dporreca@wnyhealthelink.com

APPENDIX A: CONFIDENTIALITY PROVISIONS RELATED TO MEDICAID CONFIDENTIAL DATA

Medicaid Confidential Data/Protected Health Information includes all information about a Medicaid recipient or applicant, including enrollment information, eligibility data and protected health information.

You must comply with the following state and federal laws and regulations:

- Section 367b(4) of the NY Social Services Law
- New York State Social Services Law Section 369 (4)
- Article 27-F of the New York Public Health Law & 18 NYCRR 360-8.1
- Social Security Act, 42 USC 1396a (a)(7)
- Federal regulations at 42 CFR 431.302, 42 C.F.R. Part 2
- The Health Insurance Portability and Accountability act (HIPAA), at 45 CFR Parts 160 and 164
- NYS Mental Hygiene Law Section 33.13
- NY Civil Rights Law 79-L

Please note that MCD released to you may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5), the following notice is provided to you:

“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure.”

Alcohol and Substance Abuse Related Confidentiality Restrictions:

Alcohol and substance abuse information is confidential pursuant to 42 C.F.R. Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.

You agree to ensure that you and any agent, including a subcontractor, to whom you provide MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, you agree to state in any such agreement, contract or document that the part to whom you are providing the MCD/PHI may not further disclose it without the prior written approval of the New York State Department of Health. You agree to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that you enter into that involves MCD/PHI.

**ANY AGREEMENT, CONTRACT OR DOCUMENT WITH A SUBCONTRACTOR
MUST CONTAIN ALL OF THE ABOVE PROVISIONS PERTAINING TO**

CONFIDENTIALITY. IT MUST CONTAIN THE HIV/AIDS NOTICE AS WELL AS A STATEMENT THAT THE SUBCONTRACTOR MAY NOT USE OR DISCLOSE THE MCD WITHOUT THE PRIOR WRITTEN APPROVAL OF THE NYSDOH.