

EXHIBIT A

STANDARD BUSINESS ASSOCIATE AGREEMENT

In connection with the Underlying Contact (as defined below), which requires Western New York Clinical Information Exchange, Inc. d/b/a HEALTHeLINK (“HeL” or “Business Associate”), a New York not-for-profit corporation, to be provided with, to have access to, and/or to disclose Protected Health Information (as defined below) that is subject to regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations codified at 45 C.F.R. parts 160-164, as may be amended from time to time (the “**Privacy and Security Rules**”) and the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated pursuant to such Act, including the Omnibus Rule effective September 23, 2013, as may be amended from time to time (“HITECH”)(HIPAA, the **Privacy and Security Rules, HITECH and the Omnibus Rule** together are the “**HIPAA Rules**”), this Standard Business Associate Agreement (the “**Agreement**”) is made and entered into by and between HeL and _____ (“**Covered Entity**”), in connection with HeL’s receipt, use, disclosure and creation of Protected Health Information in connection with the Underlying Contract.

1. **DEFINITIONS** Unless otherwise defined in this Agreement, any and all capitalized terms used in this Agreement have the meanings ascribed to them in the HIPAA Rules or the Underlying Contract.
 - a. “Breach” has the same meaning as the term “Breach”, as defined in 45 C.F.R. § 164.402.
 - b. “Business Associate” has the same meaning as the term “Business Associate”, as defined in 45 C.F.R. § 160.103.
 - c. “Covered Entity” has the same meaning as the term “Covered Entity”, as defined in 45 C.F.R. § 160.103.
 - d. “Data Aggregation Services” means the combining of PHI by HeL with the PHI received by HeL in its capacity as a business associate of a 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. “Electronic Protected Health Information” or “Electronic PHI” means information that comes within paragraphs 1(i) or 1(ii) of the definition of “Protected Health Information”, as defined in 45 C.F.R. § 160.103.
 - g. “Individual” has the same meaning as the term “Individual”, as defined in 45 C.F.R. § 160.103 and shall ~~include a person who qualifies as a personal representative,~~ in accordance with 45 C.F.R. § 164.502, include a person who qualifies as a “Personal Representative” as defined in the Terms and Conditions to the Underlying Contract.
 - h. “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.
 - i. “Security Incident” has the same meaning as the term “Security Incident”, as defined in 45 C.F.R. § 164.304, ~~but shall not include (i) unsuccessful attempts to penetrate computer networks, or servers maintained by Business Associate, and (ii) immaterial incidents that occur on~~

~~a routine basis, such as general “pinging” or “denial of service” attacks.~~

j. “Statewide SHIN-NY Policy Guidance” has the meaning set forth in the Terms and Conditions to the Underlying Contract.

k. “Subcontractor” has the same meaning as the term “Subcontractor”, as defined in 45 C.F.R. § 160.103.

l. “Underlying Contract” means the Participation Agreement entered into by and between HeL and Covered Entity.

m. “Unsecured Protected Health Information” or “Unsecured PHI” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services in guidance issued under section 13402(h)(2) of HITECH (42 USC 17932(h)(2)).

2. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI**

2.1 Obligations of HeL. With regard to its use and/or disclosure of PHI, HeL agrees to:

a. Not use or disclose the PHI other than as permitted or required by this Agreement or the Underlying Contracts or as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under the Statewide Policy Guidance, or the Privacy and Security Rules.

b. Implement and use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, HeL will:

(i) Implement ~~administrative, physical, and technical safeguards~~Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI as required by the Privacy and Security Rules;

(ii) Ensure that any agent, including a subcontractor, to whom HeL provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect Electronic PHI; and

(iii) Promptly (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) report to Covered Entity any Security Incident of which HeL becomes aware. Any notice of a Security Incident shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by HeL to have been, accessed, acquired, or disclosed during such Security Incident as well as any other relevant information regarding the Security Incident, in each case to the extent such information is available to HeL and promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) such information becomes known to HeL. This Section 2.1.b(iii) constitutes notice by HeL to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Covered Entity by HeL shall be required only upon request. “Unsuccessful Security Incidents” shall include, but not be limited to, pings and other broadcast attacks on HeL’s firewall, port scans, unsuccessful log-in attempts, denials of service and any combination of the above, so long

as no such incident results in unauthorized access, use or disclosure of PHI.

c. Promptly report to Covered Entity, and mitigate, to the extent practicable, any harmful effect that is known to HeL of any use or disclosure of PHI by HeL in violation of the requirements of this Agreement and/or any Security Incident or Breach, and take steps to avoid any further similar violating uses or disclosures and/or Security Incidents or Breaches.

d. Report to Covered Entity any Breach of Unsecured PHI immediately after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) the discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach and provide to Covered Entity notice of all of the elements specified in 45 C.F.R. § 164.404(c) (to the extent such information is available to HeL) promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) such information becomes known to HeL, including, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by HeL to have been, accessed, acquired or disclosed during such Breach. HeL shall cooperate and assist Covered Entity, at no cost to Covered Entity only to the extent such Breach is caused by or resulting from the acts or omissions of HeL, its subcontractors or agents, in making notification as required by law in the event of a Breach due to HeL.

e. HeL shall cooperate and assist Covered Entity in the reasonable investigation of any violation of the requirements of this Agreement and/or any Security Incident or Breach at no cost to Covered Entity to the extent such violation, Security Incident and/or Breach is caused by or resulting from the acts or omissions of HeL, its subcontractors or agents.

f. Ensure that all of its subcontractors and agents that receive, use, or have access to PHI agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply through this Agreement to HeL with respect to such information. Covered Entity acknowledges that such writing may differ in form, but will not differ in substance from this Agreement. If HeL becomes aware of a pattern of activity or practice of a subcontractor or agent that would constitute a material breach or violation of the subcontractor's or agent's obligations under such writing, HeL shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible.

g. Upon 10 days' written notice by Covered Entity, provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet applicable access requirements of the Privacy and Security Rules. If Covered Entity is required to provide access to PHI in a Designated Record Set in a specific format, HeL will provide access to PHI in such format to the extent HeL maintains PHI in such format in accordance with Section 13405(e) of the HITECH Act. ~~If an Individual makes a request for access to PHI directly to HeL, HeL shall notify Covered Entity of the request within 3 business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.~~ HeL will handle direct requests made by Individuals for access to PHI in accordance with HeL's Policies and Procedures.

h. Upon 10 days' written notice by Covered Entity, make, or make available for, amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual. If an Individual makes a request for an amendment to PHI directly to HeL, HeL shall notify Covered Entity of the request within 3 business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

i. Subject to attorney-client and any other applicable legal privilege, make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, available to the Secretary of the U.S. Department of Health and Human Services (“HHS”) or his/her designee, in the reasonable time and manner specified by the Secretary, for purposes of the Secretary determining compliance of Covered Entity with the HIPAA Rules. Subject to the legal privileges referred to above and as otherwise permitted by law, HeL shall, within 10 business days after receipt of such request, notify Covered Entity of any request for access by HHS and shall provide Covered Entity with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.

j. Document such disclosures of PHI as would be required for Covered Entity to respond, in accordance with the HIPAA Rules, to a request by any Individual for an accounting of disclosures of PHI in accordance with the requirements of the HIPAA Rules.

k. Upon 10 days’ written notice by Covered Entity, make available or provide to Covered Entity or the Individual information collected in accordance with Section 2.1(j), to permit Covered Entity to respond, in accordance with ~~HIPAA~~, the HIPAA Rules, to a request by an Individual for an accounting of disclosures of PHI. If an Individual makes a request for an accounting directly to HeL, HeL shall notify Covered Entity of the request within 3 business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

l. Upon written notice by Covered Entity that the Underlying Contract will be terminated for any reason (including, for example, by virtue of Covered Entity’s dissolution), return to Covered Entity or destroy and, unless return or destruction is infeasible, certify to Covered Entity in writing of any such destruction, within thirty (30) days of HeL’s receipt of such notice, all PHI obtained from Covered Entity or created or obtained by HeL on behalf of Covered Entity with respect to the Underlying Contract, including such PHI that is in the possession of HeL’s subcontractors and agents, and retain no copies if it is feasible to do so; provided, however, that prior to destroying or returning PHI, the Parties will meet and confer in order to reach a mutually satisfactory resolution with respect to the feasibility of destroying or returning the PHI and HeL’s right to continued use and disclosure of the PHI. If return or destruction of the PHI is infeasible as reasonably determined HeL, HeL shall extend all protections contained in this Agreement to HeL’s use and/or disclosure of any retained PHI, and limit any further uses and/or disclosures to the purposes set forth in Section 2.2 of this Agreement. This Provision shall apply to PHI that is in the possession of subcontractors or agents of HeL.

m. Comply with HITECH as applicable to HeL.

n. To the extent HeL is required to carry out Covered Entity’s obligations under 45 C.F.R. subpart E, comply with the requirements of such subpart that apply to Covered Entity in the performance of such obligations, including, but not limited to, minimum necessary and document retention standards.

o. In receiving, storing, processing, or otherwise dealing with any “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11, from an alcohol/drug abuse “program,” as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by Covered Entity, to be fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

p. Resist in judicial proceedings any efforts to obtain access to “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11 and as maintained by HeL, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

q. Comply with all applicable federal and state laws and regulations governing the confidentiality of information provided by Covered Entity including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 et seq.; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-l; New York General Business Law §§ 399-dd (Confidentiality of Social Security Account Number), 399-h, & 899-aa; New York Civil Practice Law and Rules (CPLR) §§ 2302(a), 4504, 4507, 4508, & 4510 and CPLR R. 3122(a); chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR); 10 NYCRR § 63.6(k); Federal Rules of Evidence R. 501; and 21 C.F.R. § 1304.24(d).

r. Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 2.1(a) of this Agreement, within 15 days’ after discovery thereof, notify Covered Entity of any “breach of the security of the system,” as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals’ “private information,” as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from HeL by a person without valid authorization.

s. In the event HeL chooses to destroy the PHI in its possession in compliance with paragraph 2.1(l) of this Agreement, and that PHI contains “personal identifying information” as defined in New York General Business Law § 399-h(1)(d), dispose of such information in conformity with New York General Business Law § 399-h(2).

2.2 Permitted Uses and Disclosures of PHI by HeL. Except as otherwise specified in this Agreement, HeL may use and disclose the PHI as reasonably necessary to perform its obligations under the Underlying Contract, provided that such use or disclosure does not violate the HIPAA Rules. Unless otherwise limited herein, HeL may:

a. Use the PHI in its possession for its proper management and administration of HeL, as defined in HeL’s Policies and Procedures, and to carry out the legal responsibilities of HeL.

b. Disclose the PHI in its possession to a third party for the purpose of HeL’s proper management and administration or to carry out the legal responsibilities of HeL, provided that the disclosures are required by law or HeL obtains written assurances from the person to whom the information is disclosed that it 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 HeL of any instances of which it is aware in which the confidentiality of the information has been breached. Such written assurances shall include adherence to the same restrictions and conditions on use and disclosure as apply to HeL herein. Covered Entity acknowledges that such written assurances may differ in form, but will not differ in substance, from this Agreement.

c. Provide Data Aggregation Services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) and the Underlying Contract.

d. Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight

agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, HeL shall notify Covered Entity of such pending disclosure and provide reasonable time for Covered Entity to oppose such disclosure, should Covered Entity deem such opposition necessary; provided, however, that if Covered Entity does not respond to HeL regarding such opposition prior to the date on which such disclosure must be made, HeL may, in its own discretion, disclose PHI as required by law.

2.3 Prohibited Uses and Disclosures of PHI by HeL. HeL will neither use nor disclose Covered Entity's Protected Health Information except as permitted or required by this Agreement. This Agreement does not authorize HeL to:

- a. Sell Covered Entity's Protected Health Information for any purpose;
- b. Use or disclose Covered Entity's Protected Health Information for HeL's Marketing purposes; or
- c. Offshore any PHI without the prior written consent of Covered Entity.

2.4 Obligations of Covered Entity. By acceptance hereof, Covered Entity agrees:

- a. To notify HeL of any restriction, or change in any restriction, to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect HeL's use or disclosure of PHI.
- b. To notify HeL of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect HeL's use or disclosure of PHI.
- c. Not to request HeL to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

3. TERMINATION

3.1 Termination Generally. This Agreement shall terminate when all of the PHI obtained from Covered Entity or created or obtained by HeL on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy the PHI, protections are extended to such information in accordance with Section 2.1(l).

3.2 Covered Entity's Right to Terminate for Cause. Upon Covered Entity's knowledge of a material breach by HeL of the terms of this Agreement, Covered Entity shall either:

- a. Provide an opportunity for HeL to remediate the material breach of the terms of this Agreement or end the violation. If HeL does not remediate the material breach of the terms of this Agreement or end the violation within the time specified by Covered Entity, Covered Entity shall terminate: (A) this Agreement; (B) all of the provisions of the Underlying Contract that involve the use or disclosure of PHI; and (C) such other provisions, if any, of the Underlying Contract as Covered Entity designates in its sole discretion;
- b. If HeL has breached a material term of this Agreement and remediation is not possible, immediately terminate: (A) this Agreement; (B) all of the provisions of the Underlying Contract that involve the use or disclosure of PHI; and (C) such other provisions, if any, of the Underlying Contract as Covered Entity designates in its sole discretion.

4. **INDEMNITY**

Except as otherwise set forth herein, the indemnification and limitation of liability provisions applicable to this Agreement are set forth in the Underlying Contract.

5. **MISCELLANEOUS**

5.1 **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules or other applicable law 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.

5.2 **Interpretation.** The terms of this Agreement shall prevail in the case of any conflict with (a) Underlying Contract or (b) the Statewide Policy Guidance, in each case, to the extent necessary to allow Covered Entity to comply with the HIPAA Rules and shall be construed in such a manner as to be permissible under the HIPAA Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

5.3 **Survival.** Notwithstanding any other provision of this Agreement to the contrary, the terms of this Agreement shall survive its termination and continue indefinitely solely with respect to any PHI HeL retains in accordance with this Agreement.

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

5.5 **Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

5.6 **Governing Law; Jurisdiction.** This Agreement shall be governed by the laws of the State of New York and shall be enforceable in the courts of the State of New York, Erie County, or in the United States District Court for the Western District of New York. HeL, and by acceptance hereof, Covered Entity, irrevocably submit to the exclusive jurisdiction of such courts.

5.7 **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the HIPAA Rules, SHIN-NY Policy Guidance, and any other applicable law.

5.8 **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 the HIPAA Rules and other applicable laws. The terms of the Underlying Contract that are not modified by this Agreement shall remain in full force and effect in accordance with the terms thereof. The Underlying Contract, this Agreement, the Statewide Policy Guidance as applicable to HeL, and any amendments thereto, constitute the entire agreement of the parties with respect to the subject matter contained herein.

5.9 **Ownership of PHI.** Except as specified in Section 2.2 above or as otherwise agreed to in writing

by both parties, as between Covered Entity and HeL, Covered Entity holds all right, title and interest in and to any and all PHI received by HeL from, or created or received by HeL on behalf of, Covered Entity, and HeL does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity, any right, title or interest in or to such PHI or any portion thereof.

5.10 Illegality. 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 will remain in full force and effect.

5.11 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder, unless otherwise stated, shall be deemed effectively given when personally received by the intended recipient, and shall be sent by (a) express or overnight courier with proof of delivery; or (b) United States Postal Service, certified or registered mail with signed return receipt, addressed to the person or persons identified herein. Either Party may change the person and address to which notices or other communications are to be sent to it by giving written notice of any such change in the manner provided herein. The initial notification information is:

HeL Addresses for Notice:

HEALTHeLINK
2568 Walden Avenue, Suite 107
Buffalo, NY 14225
Attn: Steve Allen
Privacy and Security Officer

with a copy to:

Barclay Damon, LLP
The Avant Building
200 Delaware Avenue, Suite 1200
Buffalo, New York 14202
Attn: Herbert J. Glose, Esq.

Covered Entity Addresses for Notice:

with a copy to:

5.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies thereof shall be deemed originals.

5.13 Independent Contractors. Notwithstanding any provision contained herein to the contrary, each of HeL and Covered Entity understand and agree that the parties hereto intend to act and perform as independent contractors and that therefore neither HeL nor Covered Entity is an employee, partner, joint venturer, of the other. Nothing in this Agreement shall be construed as placing the parties in a relationship of employer-employee, partners or joint venturers. Neither HeL nor Covered Entity shall have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party, except as otherwise expressly provided herein. HeL and Covered Entity agree to be solely and entirely responsible for their respective acts and, to the extent provided under the laws, for the acts of any of their respective officers, directors, employees, professional advisors (including accountants), contractors and other agents, except as otherwise expressly provided herein.

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

**Western New York Clinical Information
Exchange, Inc. d/b/a HEALTHeLINK**

By: _____

Print Name: Daniel E. Porreca

Title: Executive Director

Address: 2568 Walden Avenue, Suite 107
Buffalo, NY 14225

By: _____

Print Name: _____

Title: _____

Address: