

**AMERICAN BURN ASSOCIATION**  
**BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is entered into this 1st day of January, 2023 (the “Effective Date”), by and between Edward G. Hirschman Burn Center at Arrowhead Regional Medical Center (“Covered Entity”) and The American Burn Association (“Business Associate”), (collectively, the “Parties”).

WHEREAS, Covered Entity is a “Covered Entity” as that term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended (“HIPAA”), and the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164 (jointly “HIPAA Rules”) promulgated thereunder;

WHEREAS, Business Associate is a “Business Associate” as that term is defined in the HIPAA Rules, and may access, use, create, maintain, transmit, receive and/or disclose Protected Health Information (“PHI”) of the Covered Entity;

WHEREAS, pursuant to HIPAA and the HIPAA Rules, the Business Associate must agree in writing to certain mandatory provisions and must comply with HIPAA and the HIPAA Rules; and

WHEREAS, the Parties wish to enter into this Agreement to comply with the requirements of HIPAA and the HIPAA Rules.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.1 Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

1.2 All PHI that is created or received by the Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created, maintained, accessed, transmitted, used, disclosed, or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

**ARTICLE II**  
**PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

2.1. Business Associate may use, access, create, maintain, transmit, receive and disclose PHI as reasonably required or contemplated in connection with the performance of services provided to Covered Entity, which may be under a separate agreement (the “Services”) with Covered Entity, in accordance with the HIPAA Rules and this Agreement.

2.2 Business Associate may use and disclose PHI for its proper management and administration, or to carry out its legal responsibilities provided that such disclosures are Required By Law.

2.3. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

2.4. Business Associate may use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

### **ARTICLE III RESPONSIBILITIES OF BUSINESS ASSOCIATE**

3.1. Business Associate agrees it will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

3.2. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.

3.3. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware as required by 45 CFR 164.410. This includes all successful unauthorized access, use, disclosure, modification or destruction of Electronic PHI or interference with system operations in an information system containing Electronic PHI.

3.3.1. Such report will be in writing and include following information:

- a. a brief description of what occurred with respect to the Breach, including, to the extent known, the date of the Breach and the date on which the Breach was discovered; and
- b. a description of the types of Unsecured PHI that were disclosed during the Breach.

3.3.2. Business Associate will fully cooperate with Covered Entity to investigate, mitigate, assess any risk, resolve, and notify any Individuals, media, and HHS as determined reasonably necessary by Covered Entity. Covered Entity will have sole discretion in addressing and responding to any purported Breach.

3.4. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, use, disclose, access or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).

3.5. Within ten (10) days of a Covered Entity's request for access to PHI in a Designated Record Set held by Business Associate, Business Associate agrees to provide reasonable access (including inspection and obtaining copies to Covered Entity) in order to meet the requirements of the HIPAA Privacy Rule. Business Associate also agrees to provide a copy of the Designated Record Set maintained in an electronic health record to Covered Entity in an electronic format upon request as may be required under the HIPAA Rules.

3.6. Business Associate will, at the request of the Covered Entity, make available to Covered Entity within ten (10) days the PHI in a Designated Record Set held by Business Associate for amendment and immediately incorporate any amendments to such information in accordance with the HIPAA Privacy Rule.

3.7. Business Associate will maintain and, within ten (10) days following the request of Covered Entity, make available to Covered Entity the information required to provide an accounting of disclosures made by Business Associate in accordance with the HIPAA Privacy Rule.

3.8. In the event that Business Associate receives a request from an Individual or patient for Access, Amendment or Accounting purposes, Business Associate will immediately notify Covered Entity in writing of said request and provide reasonable assistance to Covered Entity in responding to said request in a timely fashion so as to permit Covered Entity to respond to the request within the time limits imposed under the HIPAA Rules and in any event, no later than ten (10) days following the request. Covered Entity will have sole and exclusive authority in overseeing the response to an Individual's or patient's request and Business Associate will not provide any response to an Individual or patient without first notifying Covered Entity in writing and complying with the reasonable instructions from Covered Entity.

3.9. Business Associate will make its internal practices, books, and records relating to the use and disclosure of such PHI available to the Secretary of the U.S. Department of Health & Human Services ("HHS") for purposes of determining the Covered Entity's and Business Associate's compliance with HIPAA and the HIPAA Rules. In the event that Business Associate receives a request from HHS or any other state or federal agency relating to PHI, Business Associate will provide notice to Covered Entity. In accordance with applicable confidentiality requirements, Business Associate will also make its internal practices, books and records relating to the use and disclosure of PHI available to Covered Entity upon reasonable prior request for purposes of Covered Entity determining Business Associate's compliance with HIPAA and the HIPAA Rules.

3.10. To the extent Business Associate agrees to carry out one or more of Covered Entity's obligation(s) under the HIPAA Rules, Business Associate will comply with such requirements of the HIPAA Rules that apply to Covered Entity in the performance of such obligation(s).

## **ARTICLE IV RESPONSIBILITIES OF COVERED ENTITY**

- 4.1. Covered Entity represents and warrants that it has developed and makes available to all patients a Notice of Privacy Practices in accordance with 45 CFR 164.520. Covered Entity will provide Business Associate with a copy of its Notice of Privacy Practices upon request.
- 4.2. Covered Entity will notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.3. Covered Entity will notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under the HIPAA Privacy Rule, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 4.4. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except for use or disclosure of PHI for management and administration or to carry out legal responsibilities of Business Associate.

## **ARTICLE V TERM AND TERMINATION**

- 5.1. Term. The Term of this Agreement shall become effective on the Effective Date and shall continue for so long as Business Associate creates, uses, discloses, maintains, transmits, or receives PHI on behalf of Covered Entity.
- 5.2. Termination. If either Party fails to perform any material obligation pursuant to this Agreement, and (i) cure of the failure to perform the material obligation is possible and the failure to cure continues for a period of ten (10) days after the breaching Party is notified in writing by the non-breaching Party of said failure to perform, or; (ii) cure is not possible, then the non-breaching Party may terminate the Agreement immediately by written notice of same to the breaching Party.
- 5.3. Obligations of Business Associate Upon Termination.
- 5.3.1. Upon termination of this Agreement for any reason, Business Associate will return to Covered Entity or, if agreed to by Covered Entity, destroy all PHI created, maintained, used, disclosed, transmitted or received from Covered Entity that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI.
- 5.3.2. If the return or destruction of PHI by Business Associate is not feasible as reasonably determined by Business Associate and agreed by Covered Entity, Business Associate will extend the protections of this Agreement to PHI and limit further uses and disclosures to those purposes that make the return or destruction of such PHI infeasible.

## **ARTICLE VI INDEMNIFICATION**

6.1 Each party (the “Indemnifying Party”) agrees to defend, indemnify and hold harmless the other party (the “Indemnified Party”), its directors, officers, employees, agents and affiliates, for any and all reasonable costs associated with responding to and mitigating Breaches of Unsecured PHI which are solely the fault of the Indemnifying Party under this Agreement.

6.2. Notwithstanding anything herein to the contrary, neither party shall be liable for indirect, special, or consequential damages.

## **ARTICLE VII MISCELLANEOUS**

7.1 Regulatory Reference. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

7.2 Preemption. 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. In the event of an inconsistency between the provisions of the HIPAA Rules and other applicable confidentiality laws, the provisions of the more restrictive rule will control.

7.3 Independent Entities. None of the provisions of this Agreement is intended to create, nor shall any be construed to create, any relationship between the Parties other than that of independent entities contracting with each other solely to effectuate the provisions of the Agreement.

7.4 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.

7.5 Amendments. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules or any more restrictive State law and any future regulations, statutes or other guidance concerning HIPAA that may affect this Agreement.

7.6 No Third-Party Beneficiaries. This Agreement shall not in any manner whatsoever confer any rights upon or increase the rights of any third-party.

7.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

BUSINESS ASSOCIATE:

COVERED ENTITY:

American Burn Association

*Kimberly A Hoarle*

By: Kimberly Hoarle

Its: Executive Director

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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