

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), is entered into as of the effective date described on the Signature Page of this Agreement (the “Effective Date”) between Ardare Corporation d/b/a Corcoran Consulting Group, with an address at 685 E. Carnegie Drive, Suite 270, San Bernardino CA 92408 (“Business Associate”) and _____, with an address at _____ (“Covered Entity”) (each a “Party” and collectively the “Parties”).

I. Recitals

- A. Covered Entity is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
- B. Business Associate is a business associate within the meaning of the privacy standards promulgated under HIPAA.
- C. Covered Entity desires to have Business Associate furnish reimbursement and practice management consulting services to Covered Entity; Business Associate has the expertise necessary to provide such services; and the Parties have entered into an agreement under which Business Associate shall provide such services (the “Services Agreement”).
- D. Performance of the Services Agreement may involve access by Business Associate to Protected Health Information (“PHI”) (as defined in 45 C.F.R. § 160.501), and is thus subject to the federal privacy, security, and security breach notification regulations issued by the United States Department of Health and Human Services (“HHS”) pursuant to HIPAA and the Health Information Technology (“HITECH”) Act of 2009 (enacted as part of Pub. Law No. 111-5 (2009)), as codified at 45 C.F.R. Parts 160 and 164 (collectively referred to herein as the “HIPAA Rules”). The purpose of this Agreement is to set forth the obligations of the Parties with respect to such PHI.
- E. The Privacy and Security Rules permit Covered Entity to transfer PHI to a business associate and permit the business associate to receive PHI on behalf of Covered Entity only if Covered Entity has obtained satisfactory assurances from the business associate that it will appropriately safeguard the information.

F. Business Associate desires to provide the satisfactory assurances required and the Parties seek to further define their respective rights and responsibilities under the HIPAA Rules for the exchange, use and disclosure of PHI.

G. In consideration of the mutual promises below and the exchange of information pursuant to this Agreement and the Services Agreement, the parties agree as follows.

II. Definitions

A. “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. § 160.103, but limited to such information created or received by Business Associate on behalf of or from Covered Entity, and shall include PHI in electronic form (“Electronic PHI”) unless specifically stated otherwise.

B. Terms used but not otherwise defined in this Agreement shall have the same meaning as given to those terms in HIPAA, the HITECH Act, and the HIPAA Regulations.

III. Business Associate’s Obligations

A. Restrictions on Use or Disclosure of PHI.

1. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.

2. Business Associate agrees to make uses and disclosures of, and requests for, PHI consistent with Covered Entity’s minimum necessary policies and procedures.

3. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.

B. Safeguards. Business Associate shall 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 by the Agreement.

C. Notice to Covered Entity: Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for in the Agreement, any Security Incident involving electronic PHI, and any Breach of Unsecured PHI as required under 45 C.F.R. § 164.410. Such report shall be provided promptly and without unreasonable delay, but no later than 60 days after Business Associate first learns of the unauthorized use or disclosure, Security Incident or Breach.

1. Covered Entity shall be responsible for providing notification to individuals whose unsecured PHI has been disclosed, as well as the Secretary and the media, as required by HIPAA Rules.

2. The parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of unsuccessful Security Incidents and that no additional notice to Covered Entity shall be required. For purposes of this Agreement, such unsuccessful Security Incidents include, without limitation, activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Electronic Unsecured PHI.

D. Subcontractors. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2).

E. Access to PHI. To the extent that Business Associate possesses an applicable Designated Record Set, and within a reasonable amount of time after receipt of a request from Covered Entity or Individual for access to such PHI, Business Associate shall make available such PHI, to the extent required for purposes of Covered Entity's compliance with its obligations under 45 C.F.R. § 164.524.

F. Amendment of PHI. To the extent that Business Associate possesses an applicable Designated Record Set, and within a reasonable amount of time after receipt of a request from Covered Entity or Individual, Business Associate shall make any amendment(s) to such PHI as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or make such PHI available for amendment, as necessary for Covered Entity to satisfy its obligations under 45 C.F.R. § 164.526

G. Accounting. Business Associate shall document and make available such disclosures of PHI 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 45 C.F.R. § 164.528.

H. Compliance with Covered Entity Obligations. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

I. Availability of Compliance Records. Business Associate shall make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules. Notwithstanding this provision, no attorney-client or other applicable legal privilege will be deemed waived by Covered Entity as a result of complying with such a request. Business Associate shall promptly provide Covered Entity with a copy of any PHI that Business Associate provides pursuant to any governmental inquiry.

J. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by Business Associate not permitted by this Agreement.

IV. Business Associate's Permitted Uses and Disclosures of PHI

A. Business Associate may use or disclose PHI as necessary to perform its obligations and functions under the Services Agreement, subject to the limitations of this Agreement.

B. Business Associate may use or disclose PHI as required by law.

C. Business Associate may use PHI to create de-identified information consistent with the standards of 45 C.F.R. § 164.514(a)-(c), and may use and disclose information that is so de-identified.

D. Business Associate may use PHI for the proper management and administration of Business Associate; to carry out its legal responsibilities; and to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

E. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

V. Covered Entity's Obligations

A. 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.

B. Immediately upon execution of this Agreement, or upon its first provision of PHI to Business Associate, whichever is later, Covered Entity shall provide Business Associate with a copy of Covered Entity's minimum necessary policies and procedures, as referred to in Section III(a)(2) above.

C. Covered Entity shall notify Business Associate of any restrictions on the use or disclosure of PHI to which the Covered Entity has (i) set forth in its Notice of Privacy Practices under 45 C.F.R. § 164.520, or (ii) agreed to or is required to abide by pursuant to 45 C.F.R. § 164.522, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

D. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

VI. Term and Termination

A. Term; Survivability. This Agreement shall become effective on the date of execution of the Services Agreement, and shall remain in effect until all PHI is either destroyed or returned to the Covered Entity, or, with respect to any PHI for which such destruction or return is infeasible, until the protections required under Section VI(D) below (“Effect of Termination”) are extended to such information. The rights and obligations of Business Associate under such Section VI(D) shall survive termination of this Agreement. Each party shall remain liable for any obligations and liabilities arising from activities occurring prior to the effective date of termination.

B. Termination for Cause. Upon either Party’s acquisition of knowledge of a material breach of the other Party of the terms of this Agreement, the non-breaching Party shall provide an opportunity of at least ten (10) business days for the breaching Party to cure the breach or end the violation. If the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party, or if cure or termination of the violation is not possible, then the non-breaching Party shall have the right to terminate the Services Agreement and, in the case of a breach by Business Associate, Covered Entity shall have the right to terminate this Agreement. If neither cure nor termination is possible, the non-breaching party shall report the violation to the Secretary.

C. Termination for Change in Law. If a change in law causes the performance of the Agreement to violate the law, Business Associate and/or Covered Entity shall terminate this Agreement if cure is not possible.

D. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall return, or at Covered Entity’s request destroy, all PHI in any form, including any PHI that is in the possession of Business Associate’s Subcontractors or agents. Business Associate and its Subcontractors/agents shall retain no copies of such information. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and shall limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible.

VII. Miscellaneous

A. Legal Compliance. The Parties expressly acknowledge that it is, and shall continue to be, their intent to fully comply with all applicable Federal, State, and local laws, rules and regulations.

B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect as of the effective date of the Agreement or as amended in the future.

C. Amendments. The Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representative of the Parties. The Parties shall amend this Agreement from time to time

as is necessary to achieve and maintain compliance with the requirements of the HIPAA Rules and other applicable law.

D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the requirements of the HIPAA Rules and other applicable law.

E. Relationship of Parties. In providing these services, Business Associate will be acting as an independent contractor and not as an employee or agent of Covered Entity. Covered Entity shall have no authority, express or implied, to commit or obligate Business Associate in any manner whatsoever.

F. Relationship to Agreements with Covered Entity. In the event that a provision of this Agreement is deemed contrary to a provision of any agreement with Covered Entity pertaining to Business Associate's services, the provisions of this Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of _____, 20____.

Ardare Corporation
d/b/a Corcoran Consulting Group

(Covered Entity)

Signed _____

Signed _____

Print Name _____

Print Name _____

Title _____

Title: _____

Date _____

Date _____