

Business Associate Agreement
Between
City of New Braunfels
and Emergicon, LLC

This Business Associate Agreement (“Agreement”) between Department and Emergicon, LLC is executed to ensure that Emergicon, LLC will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Department in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

Emergicon, LLC, agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e- PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report to Department any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to Department without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Emergicon, LLC agree to the same restrictions, conditions, and requirements that apply to Emergicon, LLC with respect to such information;

5. Make PHI in a designated record set available to Department and to an individual who has a right of access in a manner that satisfies Department's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by Department, or take other measures necessary to satisfy Department's obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to Department or an individual who has a right to an accounting within 60 days and as necessary to satisfy Department's obligations under 45 CFR §164.528;
8. To the extent that Emergicon, LLC is to carry out any of Department's obligations under the HIPAA Privacy Rule, Emergicon, LLC shall comply with the requirements of the Privacy Rule that apply to Department when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Emergicon, LLC on behalf of Department, available to the Secretary of the of Health and Human Services for purposes of determining Emergicon, LLC and Department's compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if Department notifies Emergicon, LLC of any restriction on the use or disclosure of PHI that Department has agreed to or is required to abide by under 45 CFR §164.522; and
11. If Department is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Emergicon, LLC agrees to assist Department in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Department's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Department agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Department of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Department of any threat of identity theft as a result of the incident.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by Emergicon, LLC on behalf of Department include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Department to its patients;
2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by Department to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that Emergicon, LLC has been engaged to perform on behalf of Department.

D. Termination

1. Department may terminate this Agreement if Department determines that Emergicon, LLC has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Emergicon, LLC shall return to Department or destroy all PHI received from Department, or created, maintained, or received by Emergicon, LLC on behalf of Department that Emergicon, LLC still maintains in any form. Emergicon, LLC shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this _____ day of _____, 2023

Emergicon, L.L.C.

City of New Braunfels

Signature: _____

Signature: _____