

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is effective as of \_\_\_\_\_ ("Effective Date"), and entered into by and between Warren County School District ("Business Associate") and the entities comprising the organized health care arrangement known and doing business as "BARBER NATIONAL INSTITUTE."

The reasons for this Agreement are as follows:

A. Barber National Institute is an "Organized Health Care Arrangement" designated by its component entities pursuant to the Standards for Privacy of Individually Identifiable Health Information contained in 45 C.F.R. Parts 160 and 164, as amended (the "Privacy Rule").

B. The component entities of Barber National Institute are Dr. Gertrude A. Barber Center, Inc., Dr. Gertrude A. Barber Services Systems, Inc., Dr. Gertrude A. Barber Educational Institute, Inc., Dr. Gertrude A. Barber In Home Services, Inc., and Dr. Gertrude A. Barber Foundation, Inc. (the foregoing component entities are hereinafter referred to, individually and collectively, as "BNI").

C. BNI has designated itself as a "Single Covered Entity" under the Privacy Rule.

As a Single Covered Entity, BNI is subject to (i) the Privacy Rule; (ii) the Security Standards for the Protection of Electronic Protected Health Information contained in 45 C.F.R. Parts 160 and 164, as amended (the "Security Rule"), (iii) the rules applicable to enforcement of HIPAA contained in 45 C.F.R. Part 160, as amended (the "Enforcement Rule"), and (iv) the rules applicable to Notification in the Case of Breach of Unsecured Protected Health Information contained in 45 C.F.R. Parts 160 and 164, as amended (the "Breach Notification Rule"). The Privacy Rule, the Security Rule, the Enforcement Rule and the Breach Notification Rule are hereinafter collectively referred to as the "HIPAA Rules."

D. Business Associate currently provides, or may provide in the future, certain services to or for BNI, consisting of the following: \_\_\_\_\_ (collectively, the "Services").

E. Business Associate currently provides the Services, or desires to provide the Services in the future, pursuant to a written or oral agreement with BNI (the "Services Agreement").

F. The proper performance of the Services by Business Associate may necessitate the disclosure by BNI to Business Associate of certain "Protected Health Information," as defined in the Privacy Rule at 45 C.F.R. § 164.501.

G. BNI and Business Associate desire to comply with the HIPAA Rules and with applicable provisions of Title XIII of The American Recovery and Reinvestment Act of 2009, also known as the Health Information Technology for Economic and Clinical Health Act, as amended (the "HITECH Act").

H. This Agreement sets forth the terms and conditions under which Protected Health Information will be handled between Business Associate and BNI, and between Business Associate and third parties during the term in which Services are provided by the Business Associate and thereafter.

NOW THEREFORE, for good and valuable consideration, and intending to be legally bound, the parties agree as follows:

**1. Definitions.** Unless otherwise defined in this Agreement, capitalized terms used herein shall have the meanings given to such terms in the HIPAA Rules and the HITECH Act.

## **2. Obligations and Activities of Business Associate.**

(a) Use and Disclosure of Protected Health Information. Business Associate shall not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.

(b) Appropriate Safeguards. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Policies and Procedures; Workforce Training. Business Associate shall maintain written policies and procedures in order to comply with the requirements of the HIPAA Rules and the HITECH Act, and shall train members of its workforce on such policies and procedures.

(d) Breach Notification. Business Associate shall report to BNI, without unreasonable delay but not later than 15 days following discovery by Business Associate: (i) any use or disclosure of Protected Health Information not authorized by this Agreement; (ii) any Breach of Unsecured Protected Health Information as required by the HIPAA Rules and the HITECH Act; and (iii) any Security Incident. For purposes of this Agreement, a Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate. Notifications to BNI shall include identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by the Business Associate to have been accessed, acquired or disclosed during such Breach. At the time of notification to BNI, or as promptly thereafter as information becomes available, Business Associate shall provide BNI with any other available information that BNI is required to include in a notification to the Individual.

(e) Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(f) Assurances Regarding Agents. Business Associate shall ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate will agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees in writing to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information. Upon request, Business Associate shall make available to BNI copies of all Business Associate Agreements between Business Associate and its subcontractors who create, receive, maintain or transmit Protected Health Information on behalf of Business Associate.

(g) Access. In the time and manner reasonably designated by BNI, Business Associate shall provide BNI access to Protected Health Information in a Designated Record Set or, as directed by BNI, to an Individual, in order to meet the requirements under 45 C.F.R. § 164.524.

(h) Amendments. Business Associate shall make any amendments to Protected Health Information in a Designated Record Set as directed or agreed to by BNI pursuant to 45 C.F.R. § 164.526, or take other measures necessary to satisfy BNI's obligations under 45 C.F.R. § 164.526.

(i) Practices, Book and Records. Business Associate shall make internal practices, books and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, BNI available to BNI, or to the Secretary, in a time and manner requested by BNI or designated by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Rules.

(j) Documentation of Disclosures. Business Associate shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for BNI to respond to a request

by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(k) Provision of Information. Business Associate shall provide to BNI or an Individual, in the time and manner reasonably designated by BNI, information collected in accordance with section 2(j) of this Agreement, to permit BNI to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If requested by BNI, Business Associate shall respond directly to an Individual requesting an accounting of disclosures of Protected Health Information.

(l) Compliance with Privacy Requirements. To the extent that Business Associate is to carry out one or more of BNI's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements thereof that apply to BNI in the performance of such obligations.

(m) Implementation of Security Safeguards. Business Associate shall implement administrative, physical, and technical safeguards that appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of BNI, as required by the HIPAA Rules and the HITECH Act.

(n) No Remuneration. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information unless BNI first obtains a valid authorization from the Individual and otherwise satisfies the requirements of 45 C.F.R. § 164.508

### **3. Permitted Uses and Disclosures by Business Associate.**

(a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, BNI as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules or the HITECH Act.

(b) Specific Use and Disclosure Provisions. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be used or further disclosed only required by law or for the purposes 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.

(c) Minimum Necessary. Business Associate shall only request, use and disclose Protected Health Information consistent with BNI's minimum necessary policies and procedures.

### **4. Obligations of BNI.**

(a) Notification of Limitations in Notice of Privacy Practices. BNI shall notify Business Associate of any limitations in its Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Notification of Change or Revocation of Permission. BNI shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Notification of Agreed Upon Restrictions. BNI shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that BNI 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 Protected Health Information.

(d) Breach Investigation and Notification. BNI shall be available to the Business Associate for assistance with any Breach investigation. BNI shall make all required notifications to affected Individuals unless Business Associate is instructed otherwise in writing by BNI..

(e) Impermissible Requests. BNI shall not request Business Associate to use or disclose Protected Health Information in any manner that is not permissible under the HIPAA Rules or the HITECH Act.

## **5. Term and Termination.**

(a) Term. This Agreement shall become effective as of the Effective Date, and shall terminate when all of the Protected Health Information provided by BNI to Business Associate, or created or received by Business Associate on behalf of BNI, is destroyed or returned to BNI or, if it is not feasible to return or destroy the Protected Health Information, when protections are extended to such information, in accordance with the termination provisions in this section.

(b) Termination for Cause. Upon BNI's knowledge of a material breach by Business Associate, BNI may immediately terminate this Agreement and the Services Agreement.

(c) Effect of Termination. Except as otherwise provided in this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from BNI, or created or received by Business Associate on behalf of BNI. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. Notwithstanding the foregoing provision, in the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to BNI notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **6. Miscellaneous.**

(a) Notices. Any notices to be given hereunder to a party shall be made by U.S. Mail, or by express courier to such party's address given below, or by fax to the fax telephone numbers listed below.

To Business Associate:                      Warren County School District  
589 Hospital Drive, Suite A  
Warren, PA 16365

To BNI:    Barber National Institute  
100 Barber Place  
Erie, PA 16507  
Attention: Privacy Officer  
Fax: (814) 455-1132

Each party named above may change its address by notice thereof in the manner hereinabove provided.

(b) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section in effect, or as amended.

(c) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for BNI to comply with the requirements of the Privacy Rule, the Security Rule, the HITECH Act, and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(d) Survival. The respective rights and obligations of Business Associate under section 6(c) of this Agreement shall survive the termination of this Agreement.

(e) Interpretation. Any ambiguity in this Agreement shall be resolved to permit BNI to comply with the Privacy Rule and the Security Rule. To the extent that the terms of the Services Agreement are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern.

(f) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer upon any person, other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(g) Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

The parties have caused this Agreement to be executed on the date first written above.

BARBER NATIONAL INSTITUTE

By: \_\_\_\_\_  
John J. Barber, CEO and President

BUSINESS ASSOCIATE:

Warren County School District

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Printed Name and Title