

## RESOLUTION AGREEMENT

### I. Recitals

#### 1. Parties.

The Parties to this Resolution Agreement (“Agreement”) are the United States Department of Health and Human Services, Office for Civil Rights (“HHS”), and Hospice of North Idaho (hereinafter referred to as “HONI”), a nonprofit corporation organized under the laws of and operating in the State of Idaho. HHS and HONI shall together be referred to herein as the “Parties.”

#### 2. Authority of HHS

HHS enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”) and the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”). HHS has the authority to conduct investigations of complaints alleging violations of the Privacy and Security Rules by covered entities, and covered entities must cooperate with HHS’ investigation. 45 C.F.R. §160.306(c) and §160.310(b).

#### 3. Factual Background and Covered Conduct

On February 16, 2011, the HHS Office for Civil Rights (OCR) received notification from HONI regarding the theft of a laptop computer containing the electronic protected health information (ePHI) of 441 individuals. On July 22, 2011, OCR notified HONI of OCR’s investigation regarding HONI’s compliance with the Privacy, Security, and Breach Notification Rules.

OCR’s investigation indicated that the following conduct occurred (“Covered Conduct”):

- (A) HONI did not conduct an accurate and thorough analysis of the risk to the confidentiality of ePHI on an on-going basis as part of its security management process from the compliance date of the Security Rule to January 17, 2012. In particular, HONI did not evaluate the likelihood and impact of potential risks to the confidentiality of electronic PHI maintained in and transmitted using portable devices, implement appropriate security measures to address such potential risks, document the chosen security measures and the rationale for adopting those measures, and maintain on an on-going basis reasonable and appropriate security measures.
- (B) HONI did not adequately adopt or implement security measures sufficient to ensure the confidentiality of ePHI that it created, maintained, and transmitted using portable devices to a reasonable and appropriate level from the compliance date of the Security Rule to May 1, 2011.

4. No Admission. This Agreement is not an admission of liability by HONI.

5. No Concession. This Agreement is not a concession by HHS that HONI is not in violation of the Privacy or Security Rules and that HONI is not liable for civil money penalties.

6. Intention of Parties to Effect Resolution. This Agreement is intended to resolve the OCR Complaint No. 11-127819, and any violations of the HIPAA Privacy and Security Rules related to the Covered Conduct specified in paragraph I.3 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden and expense of further investigation and formal proceedings, and in consideration of HONI's voluntary corrective actions following the breach of ePHI, the Parties agree to resolve this matter according to the Terms and Conditions below.

## **II. Terms and Conditions**

7. Payment. HONI agrees to pay HHS the amount of \$50,000 (the "Resolution Amount"). HONI agrees to pay the Resolution Amount by electronic funds transfer pursuant to written instructions to be provided by HHS. HONI agrees to make this payment on or before the Effective Date of this Agreement.

8. Corrective Action Plan. HONI has entered into and agrees to comply with the Corrective Action Plan (CAP) attached hereto as Exhibit A, which is incorporated into this Agreement by reference. If HONI breaches the CAP, then HONI will be in breach of this Agreement and HHS will not be subject to the terms and conditions in the Release set forth in Paragraph 9 of the Agreement.

9. Release by HHS. In consideration of and conditioned upon HONI's performance of its obligations under this Agreement, HHS releases HONI from any actions it has or may have against HONI under the Privacy and Security Rules arising out of or related to the Covered Conduct specified in paragraph I.3 of this Agreement. HHS does not release HONI from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

10. Agreement by Released Party. HONI shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. HONI waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a), 45 C.F.R. Part 160, Subpart E; and HHS Claims Collection provisions, 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

11. Binding on Successors. This Agreement is binding on HONI and its successors, heirs, transferees, and assigns.

12. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

14. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement must be set forth in writing and signed by both Parties.

15. Execution of Agreement and Effective Date. The Agreement shall become effective (i.e., final and binding) on the date that HHS signs this Agreement (“Effective Date”).

16. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, HONI agrees that the time between the Effective Date of this Agreement and the date this Resolution Agreement may be terminated by reason of HONI’s breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. HONI waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct specified in paragraph I.3 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.

17. Disclosure. HHS places no restriction on the publication of the Agreement. This Agreement and information related to this Agreement may be made public by either party. In addition, HHS may be required to disclose this Agreement and related material to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.

18. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

19. Authorizations. The individual(s) signing this Agreement on behalf of HONI represent and warrant that they are authorized by HONI to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrants that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

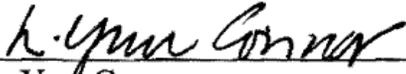
**For Hospice of North Idaho**



Kim Ransier  
Interim Executive Director  
Hospice of North Idaho, Inc.

Date: 12-17-2012

**For the United States Department of Health and Human Services**

A handwritten signature in black ink, appearing to read "L. Yuu Connor", written over a horizontal line.

Linda Yuu Connor  
Regional Manager, Region X  
Office for Civil Rights

Date: 12-28-2012

**Appendix A**  
**CORRECTIVE ACTION PLAN**  
**BETWEEN THE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**HOSPICE OF NORTH IDAHO**

**I. Preamble**

Hospice of North Idaho (hereinafter referred to as “HONI”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, HONI is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. HONI enters into this CAP as part of the consideration for the release set forth in paragraph 9 of the Agreement.

**II. Contact Persons and Submissions**

A. Contact Persons

HONI has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Kim Ransier, Interim Executive Director  
Hospice of North Idaho  
9493 North Government Way  
Hayden, ID 83835  
Telephone: 208-772-7994  
Fax: 208-209-8509

HHS has identified the following individual as its contact person with whom HONI is to report information regarding the implementation of this CAP:

Linda Yuu Connor, Regional Manager  
Office for Civil Rights, Region X  
Department of Health and Human Services  
2201 Sixth Avenue, M/S RX-11  
Seattle, WA 98121  
[Sarah.Brown@hhs.gov](mailto:Sarah.Brown@hhs.gov)

Telephone: 206-615-2290

Facsimile: 206-615-2297

HONI and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

B. Proof of Submissions. Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

### **III. Effective Date and Term of CAP**

The Effective Date for this CAP shall be calculated in accordance with paragraph 15 of the Agreement (“Effective Date”). The period for compliance with the obligations assumed by HONI under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date (“Compliance Term”). Except that after the Compliance Term ends, HONI shall still be obligated to comply with the Reportable Events requirement in section V below and document retention requirement set forth in section VI below.

### **IV. Time**

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not one of the aforementioned days.

### **V. Corrective Action Obligations**

HONI agrees to the following:

#### Reportable Events.

1. For a period of two (2) years from the Effective Date of this Agreement (the “Reporting Period”), HONI shall, upon receiving information that a workforce member may have failed to comply with its Privacy and Security policies and procedures, promptly investigate the matter. If HONI, after review and investigation, determines that a member of its workforce has failed to comply with its Privacy and Security policies and procedures, HONI shall notify HHS in writing within 30 days. Such violations shall be known as “Reportable Events.” The report to HHS shall include the following:

- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of HONI’s Privacy and Security policies and procedures implicated; and
- b. A description of the actions taken and any further steps HONI plans to take to address the matter, to mitigate any harm, and to prevent it from recurring,

including the application of appropriate sanctions against workforce members who failed to comply with its Privacy and Security policies and procedures.

2. If no Reportable Events have occurred within the two (2) year Reporting Period, HONI shall so inform OCR in writing within thirty (30) days of the conclusion of the Reporting Period.

## **VI. Document Retention**

HONI shall maintain for inspection and copying all documents and records relating to compliance with this CAP for 6 years from the Effective Date.

## **VII. Breach Provisions**

HONI is expected to fully and timely comply with all provisions contained in this CAP.

A. Timely Written Requests for Extensions. HONI may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A “timely written request” is defined as a request in writing received by HHS at least 5 days prior to the date such an act is required or due to be performed.

B. Notice of Breach and Intent to Impose CMP. The Parties agree that a breach of this CAP by HONI constitutes a breach of the Agreement. Upon a determination by HHS that HONI has breached this CAP, HHS may notify HONI of (1) HONI’s breach; and (2) HHS’ intent to impose a civil monetary penalty (CMP), pursuant to 45 C.F.R. Part 160, for the Covered Conduct set forth in paragraph I.3 of the Agreement and for any other conduct that constitutes a violation of the HIPAA Privacy and Security Rules (“Notice of Breach and Intent to Impose CMP”).

C. HONI Response. HONI shall have 30 days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. HONI is in compliance with the obligations of this CAP that HHS cited as the basis for the breach;
2. the alleged breach has been cured; or
3. the alleged breach cannot be cured within the 30-day period, but that: (a) HONI has begun to take action to cure the breach; (b) HONI is pursuing such action with due diligence; and (c) HONI has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, HONI fails to meet the requirements of section VII.C of this CAP to HHS’ satisfaction, HHS may proceed with the imposition of the CMP against HONI pursuant to 45 C.F.R. Part 160 for any violations of the Privacy and Security Rules related to the Covered Conduct set forth in paragraph I.3 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Privacy or Security Rules. HHS shall notify HONI in writing of its determination to proceed with the imposition of a CMP.

**For Hospice of North Idaho**



Kim Ransier  
Interim Executive Director  
Hospice of North Idaho, Inc.

Date: 12-17-2012

**For the United States Department of Health and Human Services**



Linda Yun Connor  
Regional Manager, Region X  
Office for Civil Rights

Date: 12-28-2012