

**AGREEMENT BETWEEN
TOWN OF WARE AND TOWN OF HARDWICK
FOR MUTUAL AID ADVANCED LIFE SUPPORT (ALS)**

An Agreement entered this 11th day of July, 2017 by and between the Town of Ware with a principal place of business at 126 Main Street, Ware, MA 01082 (“Ware”), and Town of Hardwick with a principal place of business at 307 Main Street, Gilbertville, MA 01031 (“Hardwick”).

WHEREAS, Ware is licensed as an Advanced Life Support (ALS) ambulance service provider in Massachusetts;

WHEREAS, Hardwick seeks to make available and utilize for its residents all potentially life saving resources, including ALS assistance;

WHEREAS, MGL c. 48 §59A enables a town, by vote of its board of selectmen, to authorize its fire department to go to aid another city or town or to render any other emergency aid or perform any detail, as may be ordered by the head of the town’s fire department

NOW THEREFORE, in accordance with the provisions of MGL c. 48 §59A and consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Ware agrees to respond to requests from Hardwick for EMS calls within the border of Hardwick to provide EMS services when Ware has available EMS services to include ALS resources, such availability to be determined at the sole and absolute discretion of Ware’s Fire Chief (or his designee).

2. When providing such EMS services, employees of Ware shall provide assessment, treatment and transportation consistent with all pertinent state regulations, regional guidelines and clinical protocols. Ware employee(s) shall accompany the patient and provide appropriate care until the patient is delivered to the hospital and patient care responsibilities are transferred to hospital personnel.

3. Ware shall issue an invoice to appropriate payers for services rendered to recipients transported in Ware’s ambulance under the care of Ware employees. Such claims shall include all charges normally billed to payers for ambulance service.

4. Payment. Hardwick agrees to compensate Ware in the amount of \$60,000.00 for fiscal year 2018 for EMS services provided by Ware. Payment shall be due to the Town of Ware by October 1st each year. This annual payment shall be reviewed each year by the coordinating committee and may be adjusted by the Towns. For EMS services provided by the Town of Ware in fiscal year 2017, the Town of Hardwick shall pay a pro-rated amount of \$15,000 to the Town of Ware. This amount shall be paid in fiscal year 2018. The annual payment of funds shall be deposited to the General Fund.

5. Each party's relationship to the other shall be that of an independent contractor and nothing herein shall be construed as making either party an employee, partner or joint venture of the other. It is expressly understood that Ware shall be responsible for their own employees and shall make no claims for work and vacation pay, sick leave or employee benefits of any kind. While in the performance of their duties in extending aid or services under this Agreement, Ware shall have the same immunities and privileges as if performing the same within Ware.

6. Each party hereto shall indemnify, defend, and hold the other harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of its breach of this Agreement or its negligence or misconduct, including the negligence or misconduct of its agents or employees.

7. The initial term of this Agreement shall be three (3) years beginning as of the July 1, 2017. Either party may terminate this Agreement at any time for any reason by giving written notice of ninety (90) days to the other party. The provisions of paragraphs 3, 4 and 5 shall survive the termination of the Agreement with respect to EMS services performed during the contract period. The agreement shall be reviewed annually.

8. Neither party will assign or transfer this Agreement, or any interest in this Agreement, without the prior written consent of the other party.

9. Each party will provide to the other evidence of insurance coverage of the kind and amounts the parties deem appropriate. Ware will provide documentation of its legal authority to provide basic and advanced life support ambulance service.

10. Hardwick and Ware, through their respective Boards of Selectmen, shall establish a "Ware/Hardwick Ambulance Oversight Committee" comprised of representatives of both towns that shall develop protocol and oversee an annual review of costs and evaluation of quality of service. The Committee would also address residents' concerns and questions. The Committee will be created within 2 months of signing an agreement. In the first year, the Committee will meet monthly and will alternate meeting locations between the two towns. A member of the Board of Selectmen from each town, the Town Manager/Administrator for each town, the Ware Fire Chief, and one resident from each town shall comprise the Committee.

11. The provider(s) will not discriminate against any client/patient for services because of race, color, religion, sex, sexual orientation, disability family status or national origin.

12. The parties hereto agree to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the United States of America.

Pursuant to this Agreement, Hardwick and Ware shall comply with the Health Insurance Portability and Accountability Act ("HIPAA") Privacy and Security Rules and hereby agree to

abide by all applicable requirements under Massachusetts General Laws and the Health Insurance Portability and Accountability Act ("HIPAA"), its Regulations, and the HIPAA Business Associate Agreement, attached hereto and incorporated herein as an Addendum.

All notices hereunder shall be in writing and shall be deemed to be given when mailed by and addressed to the party at the address stated below, or such other address as such party may specify by written notice to the other party.

Town of Ware Fire Department 200 West Street Ware, MA 01082 Attn: Thomas Coulombe Chief, Ware Fire Department	Town of Hardwick 307 Main Street Gilbertville, MA 01031 Attn: Theresa Cofske Town Administrator
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13. This Agreement constitutes the sole and entire understanding between the parties relating to the subject matter hereof, and supersedes all prior understanding, agreements and documentation relating to the subject hereof. This Agreement may be amended only by written instrument executed by the authorized representatives of both parties.

TOWN OF WARE

TOWN OF HARDWICK

By its Town Manager and Selectmen

By Town Administrator and Selectmen

By: Michael Fontana
Alex J. Wolf
Francis C. Galuska
John D. Bouch
Marius D. Labat
Sam B. Behlmy

By: Karen J. ...
Theresa Cofske
...
Theresa Cofske

Dated: 7/11/2017

Dated: 7/11/2017

HIPAA – BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is dated as of the 2nd day of May, 2011. The parties acknowledge that the Town of Hardwick (hereinafter “Town”), is a “Covered Entity” as defined in the Health Insurance Portability and Accountability Act of 1996 (hereinafter “HIPAA”) and corresponding regulations, and the Town of Ware (“Contractor”), acknowledges it is a “Business Associate” as defined in HIPAA and corresponding regulations. To maintain compliance with applicable law, the parties enter into this Business Associate Agreement for the parties’ participation in the Mutual Aid Advanced Life Support (ALS) Agreement between the Town of Ware and the Town of Hardwick, dated 02-May-11.

1. Definitions.

Unless otherwise provided in this Agreement, capitalized terms shall have the same meaning as set forth in the HIPAA Regulations, 45 C.F.R. Parts 142 and 160-164.

2. Obligations and Activities of Contractor as a Business Associate.

Contractor agrees:

- (a) All medical and financial records directly or indirectly pertaining to patients treated by the Town or any of its agents or employees shall at all times be strictly confidential.
- (b) Not to use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
- (c) To use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (d) To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by the Contractor in violation of the requirements of by this Agreement;

- (e) To report to the Town any use or disclosure of the Protected Health Information not provided for in by this Agreement of which it becomes aware;
- (f) To the extent that a breach of unsecured Protected Health Information occurs, Contractor has an affirmative obligation to report to the Town and the individual affected by the security or privacy breach within five (5) days by first class mail, pursuant to HIPAA's notice requirements.

- (g) To ensure that any agent, including a subcontractor and/or Business Associate, to whom Contractor provides Protected Health Information received from, or created or received by Contractor, on behalf of the Town agrees to the same restrictions and conditions that apply through by this Agreement with respect to such information;
- (h) To provide the Town or an Individual acting at the direction of the Town, access to Protected Health Information in a Designated Record Set within five (5) business days of a request by the Town, in order to meet the requirements under 45 C.F.R. § 164.524;
- (i) To make any amendments to Protected Health Information in a Designated Record Set, as directed by the Town, in order to ensure compliance with requests made by the Town or an Individual pursuant to 45 C.F.R. § 164.526 and in the time and manner designated by the Town ;
- (j) To make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor or any business associate (as defined in HIPAA and corresponding regulations) of Contractor on the Town's behalf, available to the Town, or at the request of the Town to the U.S. Secretary of Health and Human Services (hereinafter the "Secretary"), in a time and manner designated by the Town or the Secretary, for purposes of the Secretary determining the Town's compliance with the Privacy Rule or the Security Rule;
- (k) To document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Town 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;
- (l) To provide to the Town or an Individual, within five (5) business days of the Town's or Individual's request, information collected in accordance with Subsection (h) of by this Agreement, to permit the Town 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;

- (m) To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that Contractor creates, receives, maintains, or transmits on behalf of the Town as required by the Security Rule;
- (n) To ensure that any agent, including any subcontractor, to whom Contractor provides Protected Health Information agrees to abide by all of the same restrictions and conditions to which Contractor is bound under by this Agreement and implement reasonable and appropriate safeguards to protect it. Each such subcontractor or agent shall sign an agreement with Contractor containing substantially the same provisions as this Contract;
- (o) To immediately report to the Town any Security Incident of which Contractor becomes aware.
- (p) Contractor acknowledges that as of February 17, 2010 the requirements of HIPAA's Security and Privacy Rules shall apply directly to Contractor as a business associate, in the same manner as they apply to the Town, and Contractor shall be subject to HIPAA's enforcement and penalty provisions, including civil and criminal penalties.

3. Permitted Uses and Disclosures by Contractor as a Business Associate.

Except as otherwise limited in by this Agreement, Contractor may:

- (a) Use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Town as specified in the Contract, if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Security Rule, if done by the Town and would not violate the relevant policies and procedures of the Town concerning such use or disclosure;
- (b) Use the Protected Health Information in its possession for the proper management and administration of the Contractor's operations and to fulfill any present or future legal responsibilities of the Contractor provided that such uses are permitted under state and federal confidentiality laws;
- (c) Disclose the Protected Health Information in its possession to third parties for the purpose of the proper management and administration of the Contractor's operations or to fulfill any present or future legal responsibilities of the Contractor, provided that the Contractor represents to the Town, in writing, that: (i) the disclosures are required by law, as provided for in 45 C.F.R. §164.501; or (ii) the Contractor (or its Business Associate) has obtained from the third party reasonable

written assurances that said information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party and the third party notifies the Contractor and its Business Associate of any instances of which he or she is aware in which the confidentiality of the information has been breached, as required under 45 C.F.R. §164.504(e)(4);

- (d) Aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that the Contractor has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses relating to the health care operations of the Covered Entity, provided such data aggregation services are permitted by law pursuant to 45 C.F.R.164.504(e)(2)(i)(B). Under no circumstances may the Contractor disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit authorization of the Covered Entity to whom the Protected Health Information belongs;
- (e) Report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. 164.502(j)(I).

4. Obligations of the Town as a Covered Entity.

The Town shall:

- (a) Notify Contractor 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 Contractor's permitted or required uses and disclosures of Protected Health Information; and
- (b) Notify Contractor of any restriction to the use or disclosure of Protected Health Information that the Town has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Contractor's permitted or required uses or disclosures of Protected Health Information.

5. Permissible Requests by the Town as a Covered Entity.

Neither the Contractor nor the Town shall request the other to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by such other entity.

6. **Term and Termination.**

Term: This Agreement shall commence as of the date hereof and remain effective until terminated as set forth herein.

(a) Termination for Breach. In the event of a material breach by Contractor of by this Agreement, the Town may either at its option:

(i) Immediately terminate the Mutual Aid Agreement between the parties without penalty, as provided for under 45 C.F.R. §164.504(e)(2)(iii), provided that the Town has given Contractor written notice of the alleged breach and a reasonable opportunity to cure the breach or end its violation, and Contractor has not cured said breach to the reasonable satisfaction of the Town within a reasonable period.

(ii) Immediately terminate the parties' relationship, if Contractor has breached a material term of by this Agreement and cure is not possible.

(b) Termination for Improper Use. The Town may immediately terminate by this Agreement without penalty if the Town in its sole discretion, reasonably suspects that Contractor has improperly used or disclosed Protected Health Information in breach of by this Agreement.

(c) Termination for Inadequate Safeguards. The Town may immediately terminate by this Agreement without penalty if it determines, in its sole discretion, that any change or any diminution of Contractor's security procedures or safeguards render any or all of Contractor's safeguards unsatisfactory to the Town .

In either case, the Town shall have the right to report the violation to the Secretary.

(d) Termination of Contract for Cause by Contractor. In the event of a material breach by the Town of by this Agreement, Contractor may either at its option:

(i) Immediately terminate the Contract provided that Contractor has given the Town written notice of the alleged breach and a reasonable opportunity to cure the breach or end its violation, and the Town has not cured said breach to the reasonable satisfaction of Contractor within a reasonable period.

(ii) Immediately terminate the parties' relationship and the Contract if the Town has breached a material term of by this Agreement and cure is not possible.

In either case Contractor shall have the right to report the violation to the Secretary.

(e) Effect of Termination.

- (i) Upon termination of this Agreement for any reason, Contractor shall return to the Town all Protected Health Information, including all Electronic Protected Health Information, received from the Town, or created or received by Contractor on behalf of the Town. This provision shall apply to Protected Health Information, including all Electronic Protected Health Information that is in the possession of subcontractors or agents of Contractor. An authorized representative of Contractor shall certify in writing to the Town, within fifteen (15) days from the date of termination of by this Agreement, that all Protected Health Information has been returned and that Contractor no longer retains any Protected Health Information in any form.
- (ii) Upon the Town's confirmation that returning the Protected Health Information is infeasible, Contractor shall extend the protections of by 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 infeasible, for so long as the Contractor maintains such protected Health Information. Contractor shall remain bound by the provisions of by this Agreement, until such time as all Protected Health Information has been returned, as set forth in Section 6(f)(i) above.

7. **Miscellaneous.**

- (a) Regulatory References. A reference in by this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend by this Agreement from time to time as is necessary for the Contractor and the Town and the Contractor to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall

not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

- (c) Interpretation. Any ambiguity in by this Agreement shall be resolved in favor of a meaning that permits compliance with the Privacy Rule and the Security Rule.

- (d) No Third Party Beneficiaries. Nothing express or implied in by this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

- (e) Notices. Any notices to be given hereunder to a Party shall be made in accordance with the notice procedures contained in the Contract.

8. Governing Law and Venue.

This Agreement shall be governed by, and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Moreover, where any provision of Massachusetts state law is more stringent or otherwise constitutes a basis upon which the Privacy Rule or the Security Rule is preempted, state law controls and the Contractor and the Town agree to comply fully therewith.

(Remainder of this page is intentionally blank – signatures on the following page)

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF DAY AND YEAR FIRST WRITTEN ABOVE.

Town of Hardwick

Town of Ware

By: Kenan Young
Shirley Lapins
Kelly All
June J

By: Nidal Fakhry
Ali Shady
Jayna Chalinski
John P. ...
Murray Diab
Amr Behluni