

**MEMORANDUM OF UNDERSTANDING REGARDING  
PROTECTED HEALTH INFORMATION**

THIS MEMORANDUM OF UNDERSTANDING, dated as of April 10, 2015 (this "MOU") is entered into by and among the North East King County Regional Public Safety Communications Agency ("NORCOM"), a consolidated public safety communications agency formed by its member public agencies under the Washington Interlocal Cooperation Act (chapter 39.34 RCW) and organized as a nonprofit entity under chapter 24.06 RCW, and the Member Agencies that execute this MOU from time to time (each, a "Member Agency" and together with NORCOM, the "Parties").

WHEREAS, the purpose of this MOU is to memorialize the understanding between the Parties with respect to the security and confidentiality of certain "protected" health information ("Protected Health Information" or "PHI") under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations thereunder by the U.S. Department of Health and Human Services and other applicable laws including chapter 70.02 RCW, the Washington Uniform Health Care Information Act, as amended; and

WHEREAS, 45 CFR § 164.504(e)(1) requires a written agreement between a "covered entity" and a "business associate" limiting the use and disclosure of PHI and requiring certain assurances that the information shared will be protected in the hands of the receiving agency; and

WHEREAS, pursuant to 45 CFR § 164.504(e)(3), if a covered entity and a business associate are both governmental entities, such governmental entities may make the required assurances pursuant to a memorandum of understanding, rather than within a business associate agreement; and

WHEREAS, depending on the nature of the activities conducted, certain Member Agencies may be considered "covered entities" for purposes of HIPAA, and NORCOM may then be considered a "business associate" of such covered entities; and

WHEREAS, to the extent that certain Member Agencies are "covered entities" for purposes of HIPAA, and to the extent that NORCOM is a business associate of those Member Agencies, this MOU is intended to provide assurances that NORCOM will appropriately safeguard PHI in conformance with HIPAA and the regulations promulgated thereunder;

NOW THEREFORE, it is mutually understood that:

**I. DEFINITIONS.**

Except as otherwise defined herein, any and all terms used in this MOU shall have the same meaning as those terms in the HIPAA Rules (as defined below). As used in this MOU, the following terms shall have the following meanings:

"Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.

"Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

“Electronic Protected Health Information” or “Electronic PHI” shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103, except that Electronic PHI shall be limited to the information created, received, maintained, transmitted, accessed, used and/or disclosed by NORCOM or its subcontractors or agents on behalf of a Member Agency.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder, as the law and regulations may be amended.

“HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as they may be amended.

“Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103, which includes any person who is the subject of Protected Health Information.

“Interlocal Agreement” means the North East King County Regional Public Safety Communications Agency Interlocal Agreement dated as of November 1, 2007 by and among the parties thereto.

“Member Agencies” mean the public member agencies of NORCOM that execute this MOU from time to time.

“NORCOM” means the North East King County Regional Public Safety Communications Agency, is a consolidated public safety communications agency formed by its public member agencies pursuant to the Interlocal Agreement under the Washington Interlocal Cooperation Act (chapter 39.34 RCW) and organized as a nonprofit entity under chapter 24.06 RCW

“Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, except that PHI shall be limited to the information created, received, maintained, transmitted, accessed, used and/or disclosed by NORCOM or its Subcontractors or agents on behalf of a Member Agency.

“Required by Law” shall have the same meaning as the term “required by law” in 45 CFR §164.103.

“Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

“Security Incident” shall have the same meaning as the term “security incident” in 45 CFR §164.304.

“Unsecured Protected Health Information” or “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” in 45 CFR §164.402.

## II. OBLIGATIONS OF NORCOM

- a. Permitted or Required Uses. NORCOM will not use or disclose Protected Health Information other than as permitted or required by this MOU or as Required by Law including compliance with chapter 70.02 RCW.
- b. Appropriate Safeguards. NORCOM will use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this MOU, and with respect to Electronic Protected Health Information to comply with Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.). Such safeguards may include, but are not limited to, implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that NORCOM creates, receives, maintains, transmits, or accesses on behalf of a Member Agency.
- c. Mitigation. NORCOM will mitigate, to the extent necessary and reasonably practicable, any harmful effects of which NORCOM becomes aware that have resulted from any unauthorized acquisition, access, use or disclosure of Protected Health Information by NORCOM, its subcontractors or agents.
- d. Reporting Unauthorized Use or Disclosure. NORCOM will report to the relevant Member Agency, in writing, any unauthorized acquisition, access, use or disclosure of the Member Agency's Protected Health Information by NORCOM, its subcontractors or agents in violation of this MOU of which NORCOM becomes aware as soon as reasonably practicable.
- e. Notification of Breach of Unsecured PHI. As applicable, NORCOM will comply with the requirements of Subpart D of 45 CFR Part 164 (45 CFR §164.400 et seq.), including but not limited to the requirement that, following the discovery of any Breach of Unsecured PHI of a Member Agency, NORCOM shall, without unreasonable delay, and in no event later than sixty (60) days after discovery of any Breach of Unsecured PHI, notify the Member Agency in writing of any such Breach, unless a delay in such notification is required by 45 CFR § 164.412 with regard to a delay for law enforcement purposes.
- f. Subcontractors and Agents. NORCOM will ensure that all of its subcontractors and agents that create, receive, maintain, transmit, access, use and/or disclose Protected Health Information of a Member Agency on behalf of NORCOM, agree in writing to the same restrictions, conditions, and requirements that apply to NORCOM with respect to such information.
- g. Access by Individual. NORCOM will provide access, at the request of a Member Agency, and in a reasonable time and manner, to Protected Health Information of the Member Agency in a Designated Record Set, to the Member Agency or, as directed by the Member Agency, to an Individual or Individual's designee in order to satisfy the Member Agency's obligations under 45 CFR §164.524, provided that NORCOM has Protected Health Information of the Member Agency in a Designated Record Set.

- h. Amendment to PHI. NORCOM will make any amendment(s) to Protected Health Information of a Member Agency in a Designated Record Set that the Member Agency directs or agrees to pursuant to 45 CFR §164.526 at the request of the Member Agency or an Individual, and in a reasonable time and manner, and to take other measures as necessary to satisfy the Member Agency's obligations under 45 CFR §164.526, provided that NORCOM has Protected Health Information of the Member Agency in a Designated Record Set.
- i. Request for an Accounting. NORCOM will document any disclosures of Protected Health Information, and information related to such disclosures, as would be required for the Member Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. NORCOM will make available to a Member Agency or an Individual, in a reasonable time and manner, information collected pursuant to this Section II(i) in order to provide an accounting of disclosures as necessary to satisfy the Member Agency's obligations under 45 CFR §164.528.
- j. Additional Restrictions on PHI. If a Member Agency notifies NORCOM that it has agreed to be bound by additional restrictions on the uses or disclosures of certain Protected Health Information of the Member Agency pursuant to the HIPAA Rules, NORCOM will be bound by such additional restrictions and will not disclose such PHI in violation of such additional restrictions.
- k. Carrying Out Member Agency Obligation(s). To the extent that NORCOM is required by this MOU or requested from time to time to carry out one or more of a Member Agency's obligation(s) under the HIPAA Rules, NORCOM shall comply with the requirements of such HIPAA Rules that would otherwise apply to the Member Agency in the performance of such obligation(s).
- l. Access by Secretary to Determine Compliance. NORCOM will make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information created, received, maintained, transmitted, or accessed by NORCOM on behalf of the Member Agency, available to the Member Agency and to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of determining compliance with the HIPAA Rules.
- m. Indemnification. NORCOM agrees to defend, indemnify, and hold harmless each Member Agency and its officials and employees against any and all claims, demands, causes of action, losses, damages, liabilities, judgment, costs and expenses (including reasonable attorneys' fees) asserted against or incurred by the Member Agency or its officials and employees as a result of any violation of, or failure to comply with, the provisions of this Agreement by NORCOM.

### **III. PERMITTED USES AND DISCLOSURES BY NORCOM**

- a. Use and Disclosure for Performance. Except as otherwise provided in this MOU, NORCOM may only use or disclose Protected Health Information of a Member Agency

to perform services, functions, activities, and/or duties for, or on behalf of, the Member Agency as necessary to carry out NORCOM's powers, functions and duties under the Interlocal Agreement, any other agreement or law, or as necessary to perform its duties under this MOU, the Interlocal Agreement, any other agreement, or as Required by Law, provided that such use or disclosure would not violate the HIPAA Rules if done by the Member Agency.

- b. Minimum Necessary Use and Disclosure. In accordance with the HIPAA Rules, when using or disclosing Protected Health Information of a Member Agency, or when requesting PHI from a Member Agency or another covered entity or business associate, NORCOM agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- c. Use for Management, Administration and Legal Responsibilities. NORCOM may use Protected Health Information of a Member Agency if necessary for the proper management and administration of NORCOM or to carry out the legal responsibilities of NORCOM.
- d. Disclosure for Management, Administration and Legal Responsibilities. NORCOM may disclose Protected Health Information of a Member Agency if necessary for the proper management and administration of NORCOM or to carry out the legal responsibilities of NORCOM, provided that (1) the disclosure is Required By Law, or (2) (A) NORCOM obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (B) the person notifies NORCOM of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Data Aggregation Services. NORCOM may use or disclose Protected Health Information of a Member Agency to provide data aggregation services relating to the health care operations of the Member Agency as permitted by 45 CFR §164.504(e)(2)(i)(B).

#### **IV. OBLIGATIONS OF MEMBER AGENCIES**

- a. Notice of Limitation(s) in Privacy Notice. Each Member Agency will notify NORCOM of any limitation(s) in the notice of privacy practices utilized by the Member Agency under 45 CFR §164.510, to the extent that such limitation may affect NORCOM's use or disclosure of Protected Health Information of the Member Agency.
- b. Notice of Changes in Individual's Permission. Each Member Agency will notify NORCOM of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information of the Member Agency, to the extent that such changes may affect NORCOM's use or disclosure of such Protected Health Information.
- c. Notice of Restriction on Use or Disclosure. Each Member Agency will notify NORCOM of any restriction on the use or disclosure of Protected Health Information of the Member Agency that the Member Agency has agreed to or is required to abide by under 45 CFR §

164.522, to the extent that such restriction may affect NORCOM's use or disclosure of such Protected Health Information.

- d. Impermissible Request by a Member Agency. No Member Agency will request that NORCOM use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by the Member Agency.

## V. TERM; PARTIES; MATERIAL BREACH; TERMINATION

- a. Term; Parties. This MOU shall become effective on the date set forth above and shall continue in effect until the effective date of (1) any subsequent memorandum or agreement that supersedes this MOU, or (2) any change in applicable law that results in the elimination of the requirement for this MOU, whichever occurs first. Member Agencies agreeing to be bound by these terms may sign this MOU from time to time without amending or restating this MOU and with the prior consent of or notice to the other Parties hereto.
- b. Material Deviation. Upon a Member Agency's knowledge of a material deviation by NORCOM of any of the terms and conditions of this MOU affecting the Protected Health Information of the Member Agency, the Member Agency shall provide NORCOM reasonable notice and an opportunity to cure the identified issue. If the issue cannot be cured or waived within a reasonable time period, as determined in the sole discretion of the Member Agencies, the Member Agencies may terminate this MOU.
- c. Termination. Upon any termination of this MOU, any PHI received from, or created or received by NORCOM, shall, if feasible, be returned or destroyed; and if such return or destruction is not feasible, then the protections of this MOU shall continue to extend to that PHI and limit further uses and disclosures to those purposes that make the return or destruction infeasible.

## VI. MISCELLANEOUS

- a. Agency. The employees or agents of each Party who are engaged in the performance of this MOU shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees of the other Party.
- b. Records. All records and reports relating to this MOU shall be retained by NORCOM in accordance with the Washington State Archives Records Retention Schedules, unless returned to the applicable Member Agency; provided, however, all records and reports shall be retained for a minimum of six years.
- c. References to Law and Rules. A reference in this MOU to any section of law, regulations, or rules (including but not limited to the HIPAA Rules), means the section of law or rules as in effect or as amended.
- d. Amendment. The Parties will take such action to amend this MOU from time to time as is necessary to ensure that this MOU at all times remains consistent with applicable law

and rules regarding use and disclosure of Protected Health Information (including but not limited to the HIPAA Rules).

- e. Interpretation. Any ambiguity in this MOU shall be resolved in favor of a meaning that permits a Member Agency and NORCOM to comply with the HIPAA Rules or chapter 70.02 RCW whichever is more protective of patient privacy.
- f. No Third Party Beneficiaries. Nothing express or implied in this MOU 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.
- g. Severability. If any provision of this MOU shall be held invalid, such invalidity shall not affect the other provisions of this MOU that can be given effect without the invalid provisions. If such remainder conforms to the requirements of applicable law and the fundamental purpose of this MOU, the provisions of this MOU are declared severable.
- h. Counterparts. This MOU may be executed in any number of counterparts each of which when so executed will be deemed to be an original and all of which when taken together will constitute one MOU.

IN WITNESS WHEREOF, this MOU has been executed and agreed upon by NORCOM and the Member Agencies below.

[signature pages to follow]

By Thomas R. On

NORCOM

By Mark Rosen

Bellevue Fire Department

By Robert Van Hee

Bothell Fire Department

By Matthew R. Larson  
City

Snoqualmie Fire Department

By Greg Smith  
CHAIRMAN KCFD #45

Duvall Fire District #45

By Bob Backer

Eastside Fire and Rescue

By Chris Connor, Fire

Fire District #27

By Marilynne Seard  
Deputy City Manager

Kirkland Fire Department

By Sue

Mercer Island Fire Department

By Jim

Northshore Fire Department

By MOORE

Redmond Fire Department

By Matt Conner

Shoreline Fire Department



By James Kinisley  
James Kinisley - Chief

Skykomish Fire District #50

By Greg Ahearn

Snoqualmie Pass Fire Department

By Gregory Ahearn  
Digitally signed by Gregory Ahearn  
DN: cn=Gregory Ahearn, o=Woodinville  
Fire and Rescue, ou=Deputy Fire Chief,  
email=gahearn@wfr.org, c=US  
Date: 2015.04.23 10:16:03 -0700

Woodinville Fire and Rescue

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_