

BUSINESS ASSOCIATE CONTRACT TERMS

Purpose: These contract terms satisfy our obligation under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160-64) to ensure the integrity and confidentiality of protected health information that a business associate may create or receive for or from our Company.

Applicability: These contract terms must be used with each of our “business associates.” A “business associate” is any person or organization that we engage to perform or assist in performing functions or activities that involve use or disclosure of protected health information created or received for or from our Company or that involve electronic transmission of standard transactions. A “business associate” is also any person or organization that provides legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation or financial services to or for our Company and receives protected health information from our Company or another business associate of our Company.

Instructions: Consult our Legal Department to ensure that we bind each business associate to the contract terms below either by incorporating them into our written agreement with the business associate, or by having the business associate execute an addendum containing these terms to be added to that agreement. If these terms are incorporated into the agreement, conform the references to “Company” and “Business Associate” and the section numbering and capitalized or otherwise defined terms to the conventions used by that agreement. Insert the appropriate information for bracketed material.

ADDENDUM TO AGREEMENT WITH BUSINESS ASSOCIATE

This addendum (“Addendum”) is effective upon execution, and amends and is made part of _____
_____ dated as of _____

(“Agreement”) by and between _____
 (“Business Associate”) and {insert Company name} (“Company”).

Company and Business Associate mutually agree to modify Agreement to incorporate the terms of this Addendum to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64).

A. Privacy of Protected Health Information.

1. Permitted Uses and Disclosures. Business Associate is permitted or required to use or disclose Protected Health Information it creates or receives for or from Company or to request Protected Health Information on Company’s behalf only as follows:

a) Functions and Activities on Company’s Behalf. Except as otherwise limited in this Addendum, Business Associate is permitted to request the minimum necessary protected health information on Company’s behalf, and to use and to disclose the minimum necessary Protected Health Information {use either option 1 or 2}

{option 1} to perform functions, activities, or services for or on behalf of Company, as specified in Agreement.

{option 2} for the following purposes {either insert full description the functions, activities and services to be performed on Company’s behalf, or reference sections of Agreement that specify those functions, activities and services} _____

b) Business Associate’s Operations. Business Associate may use the minimum necessary Protected Health Information for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities. Business Associate may disclose the minimum necessary Protected Health Information for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities only if:

- (i) The disclosure is required by law; or
- (ii) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate will disclose Protected Health Information that the person or organization will:

a. Hold such Protected Health Information in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and

b. Promptly notify Business Associate (who will in turn promptly notify Company) of any instance of which the person or organization becomes aware in which the confidentiality of such Protected Health Information was breached.

2. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Protected Health Information except as permitted or required by this Addendum, as otherwise permitted in writing by Company, or as required by law. This Addendum does not authorize Business Associate to use or disclose Protected Health Information in a manner that would violate the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) if done by Company, except as set forth in Section A(1)(b).

3. **Information Safeguards.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards, in compliance with Social Security Act § 1173(d) (42 U.S.C. § 1320d-2(d)), 45 Code of Federal Regulations § 164.530(c) and any other implementing regulations issued by the U.S. Department of Health and Human Services. The safeguards will be designed to preserve the integrity and confidentiality of, and to prevent intentional or unintentional non-permitted or violating use or disclosure of, Protected Health Information. Business Associate will document and keep these safeguards current.

4. **Sub-Contractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Addendum or in writing by Company to disclose Protected Health Information, to provide reasonable assurance, evidenced by written contract, that such subcontractor or agent will comply with the same privacy and security obligations as Business Associate with respect to such Protected Health Information.

B. Compliance with Standard Transactions. If Business Associate conducts in whole or part Standard Transactions for or on behalf of Company, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 Code of Federal Regulations Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Company that:

1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
2. Adds any data element or segment to the maximum defined data set;
3. Uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification; or
4. Changes the meaning or intent of the Standard Transaction’s implementation specification.

C. Individual Rights.

1. **Access.** Business Associate will, within {insert number not to exceed 30} days after Company’s request, make available to Company or, at Company’s direction, to the individual (or the individual’s personal representative) for inspection and obtaining copies any Protected Health Information about the individual that that is in Business Associate’s custody or control, so that Company may meet its access obligations under 45 Code of Federal Regulations § 164.524.

2. **Amendment.** Business Associate will, upon receipt of notice from Company, promptly amend or permit Company access to amend any portion of the Protected Health Information, so that Company may meet its amendment obligations under 45 Code of Federal Regulations § 164.526.

3. **Disclosure Accounting.** So that Company may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528:

- a) **Disclosure Tracking.** Starting April 14, 2003, Business Associate will record information concerning each disclosure of Protected Health Information, not excepted from disclosure tracking under Addendum Section C.3(b) below, that Business Associate makes to Company or a third party. The information Business Associate will record is (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a

brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the “disclosure information”). For repetitive disclosures Business Associate makes to the same person or entity (including Company) for a single purpose, Business Associate may provide (x) the disclosure information for the first of these repetitive disclosures, (y) the frequency, periodicity or number of these repetitive disclosures, and (z) the date of the last of these repetitive disclosures. **{use either option 1 or 2}**

{option 1: Business Associate will make this disclosure information available to Company within **{insert number not to exceed 60}** days after Company’s request.}

{option 2: Business Associate will report this disclosure information to Company within **{insert number not to exceed 60}** days after making such disclosure.}

b) Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for disclosures of Protected Health Information that this Addendum or Company in writing permits or requires (i) for purposes of treating the individual who is the subject of the Protected Health Information disclosed, payment for that treatment, or for the health care operations of Business Associate; (ii) to the individual who is the subject of the Protected Health Information disclosed or to that individual’s personal representative; (iii) pursuant to a valid authorization by the person who is the subject of the Protected Health Information disclosed; (iv) to persons involved in that individual’s health care or payment related to that individual’s health care; (v) for notification for disaster relief purposes, (vi) for national security or intelligence purposes; (vii) as part of a limited data set; or (viii) to law enforcement officials or correctional institutions regarding inmates or other persons in lawful custody.

c) Disclosure Tracking Time Periods. Business Associate must have available for Company the disclosure information required by Addendum Section C.3(a) for the 6 years preceding Company’s request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before April 14, 2003).

4. Restriction Requests; Confidential Communications. Business Associate will comply with any agreements for confidential communications of which it is aware and to which Company agrees pursuant to 45 C.F.R. § 164.522(b) by communicating with enrollees using agreed upon alternative means or alternative locations.

5. Inspection of Books and Records. Business Associate will make its internal practices, books, and records, relating to its use and disclosure of Protected Health Information, available to Company and to the U.S. Department of Health and Human Services to determine compliance with 45 Code of Federal Regulations Parts 160-64 or this Addendum.

D. Breach of Privacy Obligations.

1. Reporting. Business Associate will report to Company any use or disclosure of Protected Health Information not permitted by this Addendum or in writing by Company. Business Associate will make the report to Company’s Legal Department not more than **{insert time period}** after Business Associate learns of such non-permitted use or disclosure. Business Associate’s report will at least:

- a) Identify the nature of the non-permitted use or disclosure;
- b) Identify the Protected Health Information used or disclosed;
- c) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure;
- d) Identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures;

- e) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and
- f) Provide such other information, including a written report, as Company may reasonably request.

2. **Termination of Agreement.**

- a) **Right to Terminate for Breach.** Company may terminate Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Addendum. Company may exercise this right to terminate Agreement by providing Business Associate written notice of termination, stating the breach of the Addendum that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Company's notice of termination.
- b) **Obligations upon Termination.**
 - (i) **Return or Destruction.** Upon termination, cancellation, expiration or other conclusion of Agreement, Business Associate will if feasible return to Company or destroy all Protected Health Information, including all Protected Health Information in whatever form or medium (including any electronic medium) and all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of Protected Health Information. Business Associate will complete such return or destruction as promptly as possible, but not later than **{insert number}** days after the effective date of the termination, cancellation, expiration or other conclusion of Agreement. Business Associate will identify any Protected Health Information that cannot feasibly be returned to Company or destroyed. Business Associate will limit its further use or disclosure of that Protected Health Information to those purposes that make return or destruction of that Protected Health Information infeasible. Within **{insert same number as above}** days after the effective date of the termination, cancellation, expiration or other conclusion of Agreement, Business Associate will (a) certify on oath in writing to Company that such return or destruction has been completed, (b) deliver to Company the identification of any Protected Health Information for which return or destruction is infeasible, and (c) certify that it will only use or disclose such Protected Health Information for those purposes that make return or destruction infeasible.
 - (ii) **Continuing Privacy Obligation.** Business Associate's obligation to protect the privacy of the Protected Health Information it created or received for or from Company will be continuous and survive termination, cancellation, expiration or other conclusion of Agreement.
 - (iii) **Other Obligations and Rights.** Business Associate's other obligations and rights and Company's obligations and rights upon termination, cancellation, expiration or other conclusion of Agreement will be those set out in **{insert sections of Agreement addressing post-termination rights and obligations}**.

{The following indemnity provisions are not required by HIPAA and are therefore optional}

3. **Indemnity.** Business Associate will indemnify and hold harmless Company and any Company affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

- a) **Right to Tender or Undertake Defense.** If Company is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Addendum by

Business Associate or any subcontractor, agent, person or entity under Business Associate's control, Company will have the option at any time either (i) to tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent Company's interests at Business Associate's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

b) Right to Control Resolution. Company will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Company may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Company under this Addendum Section D.3.

E. General Provisions.

1. Definitions. The capitalized term "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Company or another business associate of Company. The capitalized term "Standard Transactions" shall have the meaning set out in, 45 C.F.R. § 162.103.

2. Amendment to Agreement. Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to Protected Health Information or Standard Transactions, this Addendum and the Agreement of which it is part will automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.

F. Conflicts. The terms and conditions of this Addendum will override and control any conflicting term or condition of Agreement. All nonconflicting terms and conditions of Agreement remain in full force and effect.

IN WITNESS WHEREOF, Company and Business Associate execute this Addendum in multiple originals to be effective on the last date written below.

{Insert Business Associate's Name}

{Insert Company's name}

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____