

Sample Business Associate Addendum – Short Form

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum"), effective _____ ("Effective Date"), is entered into by and between ("Covered Entity") and ("Business Associate") _____

RECITALS

- A. The U.S. Department of Health and Human Services has issued regulations on "Privacy Standards for Individually Identifiable Health Information", implementing the Health Insurance Portability and Accountability Act of 1996 (the "Privacy Standards").
- B. Covered Entity and Business Associate satisfy the respective definitions of "Covered Entity" and "Business Associate" contained in the regulations.
- C. Covered Entity is required by HIPAA to obtain satisfactory assurances that Business Associate will appropriately safeguard all Protected Health Information ("PHI") disclosed by, or created or received by Business Associate on behalf of, Covered Entity.

In consideration of the mutual promises and agreements below and in order to comply with all legal requirements for the protection of this information, the parties hereto agree as follows:

I. GENERAL PROVISIONS

Section 1. Effect. The terms and provisions of this Addendum shall supercede any other conflicting or inconsistent terms and provisions in any and all agreements, whether oral or written, between the parties involving the disclosure of Protected Health Information ("PHI") by Covered Entity to Business Associate, or the creation or receipt of PHI by Business Associate on behalf of Covered Entity, including all exhibits or other attachments thereto and all documents incorporated therein by reference (the "Agreement(s)"). Without limitation of the foregoing, any limitation or exclusion of damages provisions in the Agreement(s) shall not be applicable to this Addendum.

Section 2. Amendment. Business Associate and Covered Entity agree to amend this Addendum to the extent necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Part 142) (collectively, the "Standards") promulgated or to be promulgated by the Secretary or other regulations or statutes. Business Associate agrees that it will fully comply with all such Standards and that it will agree to amend this Addendum to incorporate any material required by the Standards.

Section 3. Definitions. Capitalized terms used herein without definition shall have the meaning assigned to such terms in 45 C.F.R. Parts 160 and 164.

II. OBLIGATIONS OF BUSINESS ASSOCIATE

Section 1. Use and Disclosure of PHI. Business Associate may use and disclose PHI only as required to satisfy its obligations under the Agreement(s), as permitted herein, or required by law, but shall not otherwise use or disclose any PHI. Business Associate shall not, and shall ensure that its directors, officers, employees contractors and agents do not, use or disclose PHI received from Covered Entity in any manner that would constitute a violation of the Privacy Standards if so used or disclosed by Covered Entity, except that Business Associate may use PHI (1) for Business Associate's proper management and administrative services, (ii) to carry out the legal responsibilities of Business Associate or (iii) to provide data aggregation services relating to the health care operations of Covered Entity if required under the Agreement(s). Business Associate hereby acknowledges that, as between Business Associate and Covered Entity, all PHI shall be and remain the sole property of Covered Entity, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to this Addendum. Business Associate further represents that, to the extent Business Associate requests that Covered Entity disclose PHI to Business Associate, such a request is only for the minimum necessary PHI for the accomplishment of Business Associate's purpose.

Section 2. Additional Obligations. Business Associate agrees that it shall:

- A. Not use or further disclose PHI other than as permitted or required by this Addendum or as required by law.
- B. Use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by this Addendum.
- C. Immediately report to Covered Entity any use or disclosure of PHI in violation of this Addendum of which it becomes aware.
- D. Ensure that any of Business Associate's agents, including contractors or subcontractors, to whom it provides PHI, which is received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate pursuant to this Addendum with respect to such PHI.
- E. Make PHI available to the Individual in accordance: with 45 C.F.R. § 164.524. [Not necessary if Business Associate does not have Protected Health Information in a Designated Record Set.]
- F. Make available PHI for amendment and incorporate any amendments made by the Individual to PHI in accordance with 45 C.F.R. § 164.526. [Not necessary if Business Associate does not have Protected Health Information in a Designated Record Set..]
- G. Make available such information as is in Business Associate's possession and is required for the Covered Entity to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to the Covered Entity. Business Associate hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

H. Make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Standards.

I. Upon termination of the Agreement(s), return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity and which Business Associate still maintains in any form and retain no copies of such PHI. If the return or destruction is not feasible, Business Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of such PHI infeasible.

[Section 3. Indemnification. Business Associate hereby agrees to indemnify and hold Covered Entity harmless from and against any and all liability and costs, including attorneys' fees, created by a breach of this Addendum by Business Associate, its agents or subcontractors, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement(s).]

[Section 4. Insurance. Business Associate shall obtain and maintain during the term of this Addendum liability insurance covering claims based on a violation of the Standards or any applicable state law or regulation concerning the privacy of patient information and claims based on its obligations pursuant to this Addendum in an amount not less than \$1,000,000 per claim. Such insurance shall be in the form of occurrence-based coverage and shall name Covered Entity as an additional named insured.

A copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity upon written request.]

III. TERMINATION OF AGREEMENT(S) WITH BUSINESS ASSOCIATE

Any other provision in the Agreement(s) notwithstanding, Covered Entity may terminate this Addendum and the Agreement(s) upon five (5) days written notice to Business Associate if Covered Entity determines, in its sole discretion, that Business Associate has violated a material term of this Addendum and such breach is not cured within such five (5) day period.

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Addendum to be executed by their duly authorized representatives as of the Effective Date.

BUSINESS ASSOCIATE

COVERED ENTITY

By:

By:

Title:

Title:

Date:

Date: