

# *Sample Business Associate Addendum*

## **BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum ("Addendum"), effective \_\_\_\_\_200\_ ("Effective Date"), is entered into by and between \_\_\_\_\_ (the "Covered Entity") and (the "Business Associate").

### **I. RECITALS**

Section 1. Covered Entity is a health care provider. The U.S. Department of Health and Human Services has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of Individually Identifiable Health Information obtained, created or maintained by certain entities, including health care providers.

Section 2. Business Associate either 1) performs certain functions for, or on behalf of Covered Entity 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; or 2) provides legal, actuarial, accounting, consulting, data aggregation, management, accreditation, administrative or financial services for Covered Entity involving; the disclosure of Protected Health Information ("PHI") by Covered Entity or another business associate of Covered Entity.

Section 3. Covered Entity is required by HIPAA to obtain satisfactory assurances that Business Associate will appropriately safeguard all PHI disclosed by, or created or received by Business Associate on behalf of, Covered Entity.

Section 4. The parties desire to enter into this agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Addendum.

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 agree as follows:

### **II. GENERAL PROVISIONS**

Section 1. Effect. This Addendum supplements, modifies and amends any and all agreements (the "Agreement(s)"), 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. The terms and provisions of this Addendum shall supersede any other conflicting or inconsistent terms and provisions in any Agreement(s) between the parties, including all exhibits or other attachments thereto and all documents incorporated therein by reference. Without limitation of the foregoing, any limitation or exclusion of damages provisions shall not be applicable to this Addendum.

Section 2. Amendment. Business Associate and the 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 respective meanings assigned to such terms in Part V of this Addendum.

### **III. OBLIGATIONS OF BUSINESS ASSOCIATE**

Section 1. Use and Disclosure of Protected Health Information. Business Associate may use and disclose Protected Health Information 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 Protected Health Information. Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose Protected Health Information received from the Covered Entity in any manner that would constitute a violation of the Privacy Standards if so used or disclosed by the Covered Entity, except that Business Associate may use or disclose Protected Health Information (i) 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 the Covered Entity if required under the Agreement(s). Business Associate hereby acknowledges that, as between Business Associate and the Covered Entity, all Protected Health Information shall be and remain the sole property of the 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 the Covered Entity disclose Protected Health Information to Business Associate, such a request is only for the minimum necessary Protected Health Information for the accomplishment of Business Associate's purpose.

Section 2. Safeguards Against Misuse of Information. Business Associate agrees that it will use all appropriate safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to the terms and conditions of this Addendum.

Section 3. Reporting of Disclosures of Protected Health Information. Business Associate shall, within thirty (30) days of becoming aware of any use or disclosure of Protected Health Information in violation of this Addendum by Business Associate, its officers, directors, employees, contractors or agents or by a third party to which Business Associate disclosed Protected Health Information pursuant to Section 4 of this Addendum, report such disclosure to the Covered Entity.

Section 4. Agreements by Third Parties. Business Associate shall obtain and maintain an agreement with each agent or subcontractor that has or will have access to Protected Health Information, which is received from, or created or received by Business Associate on behalf of

the Covered Entity, pursuant to which agreement such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate pursuant to this Addendum with respect to such Protected Health Information.

Section 5. Access to Information. Within five (5) days of a request by the Covered Entity for access to Protected Health Information about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such Protected Health Information for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within two (2) days forward such request to the Covered Entity. Any denials of access to the Protected Health Information requested shall be the responsibility of the Covered Entity. [Not necessary if Business Associate does not have Protected Health Information in a Designated Record Set.]

Section 6. Availability of Protected Health Information for Amendment. Within ten (10) days of receipt of a request from the Covered Entity for the amendment of an individual's Protected Health Information or a record regarding an individual contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. § 164.526. [Not necessary if Business Associate does not have Protected Health Information in a Designated Record Set.]

Section 7. Accounting of Disclosures. Within ten (10) days of notice by the Covered Entity to Business Associate that it has received a request for an accounting of disclosures of Protected Health Information, other than related to the treatment of the patient, the processing of payments related to such treatment, or the operation of a covered entity or its business associate and not relating to disclosures made earlier than six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to the Covered Entity such information as is in Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 C.F.R. §164.528. At a minimum, Business Associate shall provide the Covered Entity with the following information: (1) the date of the disclosure, (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. 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.

Section 8. Availability of Books and :Records. Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the Covered Entity available to the Secretary for purposes of determining the Covered Entity's and Business Associate's compliance with the Privacy Standards.

Section 9. Indemnification. Business Associate hereby agrees to indemnify and hold the 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 10. 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 the Covered Entity as an additional named insured. A copy of such policy or a certificate evidencing; the policy shall be provided to the Covered Entity upon written request.

Section 11. Notice of Request for Data. Business Associate agrees to notify the Covered Entity within five (5) business days of Business Associate's receipt of any request or subpoena for Protected Health Information. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to cooperate fully with the Covered Entity in such challenge.

Section 12. Injunction. Business Associate hereby agrees that the Covered Entity will suffer irreparable damage upon Business Associate's breach of this Addendum and that such damages shall be difficult to quantify. Business Associate hereby agrees that the Covered Entity may file an action for an injunction to enforce the terms of this Addendum against Business Associate, in addition to any other remedy the Covered Entity may have.

#### IV. TERM AND TERMINATION

Section 1. Term. This Addendum shall become effective on the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Agreement(s).

Section 2. Termination Upon Breach of Provisions Applicable to Protected Health Information. Any other provision of the Agreement(s) notwithstanding, this Addendum and the Agreement(s) may be terminated by the Covered Entity upon five (5) days written notice to Business Associate in the event that the Business Associate breaches any provision contained in this Addendum and such breach is not cured within such five (5) day period; provided, however, that in the event that termination of this Addendum and the Agreement(s) is not feasible, in the Covered Entity's sole discretion, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary, notwithstanding; any other provision of this Addendum or any Agreement(s) to the contrary.

Section 3. Return or Destruction of Protected Health Information upon Termination. Upon termination of this Addendum, Business Associate shall either return or destroy all Protected Health Information received from the Covered Entity or created or received by Business Associate on behalf of the Covered Entity and which Business Associate still maintains

in any form. Business Associate shall not retain any copies of such Protected Health Information. Notwithstanding the foregoing, to the extent that the Covered Entity agrees that it is of feasible to return or destroy such Protected Health Information, the terms and provisions of this Addendum shall survive such termination and such Protected Health Information shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such Protected Health Information.

Section 4. The Covered Entity's Right of Cure. At the expense of Business Associate, the Covered Entity shall have the right to cure any breach of Business Associate's obligations under this Addendum. The Covered Entity shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by the Covered Entity to cure Business Associate's breach. All requests for payment for such services of the Covered Entity shall be paid within thirty (30) days.

Section 5. Transition Assistance. Following the termination of this Addendum and the Agreement(s) for any reason, Business Associate agrees to provide transition services for the benefit of the Covered Entity, including the continued provision of its services required under the Agreement(s) until notified by the Covered Entity that the alternative provider of services is able to take over the provision of such services and the transfer of the Protected Health Information and other data held by the Business Associate related to its services under the Agreement(s).

## V. DEFINITIONS FOR USE IN THIS ADDENDUM

"Data Aggregation" shall mean, with respect to Protected Health Information created or received by Business Associate in its capacity as the business associate of the Covered Entity, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective,- covered entities.

"Designated Record Set" shall mean a group of records maintained by or for the Covered Entity that is (1) the medical records and billing records about individuals maintained by or for the Covered Entity, (i) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein the term

"Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.

"Electronic Media" shall mean the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media. "Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual, and

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Privacy Standards" shall mean the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

"Protected Health Information" shall mean Individually Identifiable Health Information that is (1) transmitted by electronic -media, (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. "Protected Health Information" shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g and (ii) records described in 20 U.S.C. §1232g (a)(4)(B)(iv).

"Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services.

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

BUSINESS ASSOCIATE

COVERED ENTITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_