

## **BUSINESS ASSOCIATE AGREEMENT ADDENDUM**

This Business Associate Agreement Addendum (“Addendum”) amends the Business Associate Agreement (“Agreement”) between \_\_\_\_\_ (“Covered Entity”) and \_\_\_\_\_ (“Business Associate”). The purpose of this Addendum is to amend the language of the original Agreement so that the Agreement complies with the provisions provided in the HITECH Act, signed into law on February 17, 2009 as part of P.L. 111-005. To the extent that any provision in the Agreement conflicts with the provisions of this Addendum, the provisions in this Addendum supersede and replace those provisions in the original Agreement.

### **1. DEFINITIONS**

To the Agreement, add the following definitions:

1.1 **“HITECH”** means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

1.2 **“Unsecured PHI”** shall have the same definition that the Secretary gives the term in guidance issued pursuant to § 13402 of HITECH.

### **2. BUSINESS ASSOCIATE OBLIGATIONS**

To the Agreement, add the following provisions in the section describing the Business Associate’s obligations:

2.1 Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI or EPHI other than as provided by this Agreement, and to implement administrative, physical, and technical safeguards as required by sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations and HITECH to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, in the same manner that such sections apply to the Covered Entity. *See* HITECH § 13401.

2.2 The additional requirements of Title XIII of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby incorporated into this Agreement. *See* HITECH § 13401.

2.3 Business Associate agrees to adopt the technology and methodology standards required in any guidance issued by the Secretary pursuant to HITECH §§ 13401-13402.

2.4 Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement and to notify Covered Entity of any breach of Unsecured PHI, as required under HITECH § 13402.

2.5 In the case of a breach of Unsecured PHI, Business Associate shall, promptly following the discovery of a breach of such information, notify Covered Entity of such breach. The notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the breach.

2.6 Business Associate agrees to enter into an agreement with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and HITECH § 13401 that is appropriate and sufficient to require each such subcontractor to protect PHI to the same extent required of Business Associate hereunder.

2.7 Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including but not limited to 45 CFR §164.528. Except in the case of a direct request from an Individual for an accounting related to treatment, payment, or operations disclosures through an electronic health record, if the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within five (5) business days of a request notify Covered Entity about such request. Covered Entity shall either request that Business Associate provide such information directly to the Individual, or it shall request that the information be immediately forwarded to Covered Entity for compilation and distribution to such Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment, or operations disclosures through electronic health records, Business Associate shall provide such accounting to the Individual in accordance with and effective on the applicable date set forth in HITECH § 13405(c). Business Associate shall not disclose any PHI unless such disclosure is Required by Law or is in accordance with this Agreement. Business Associate shall document such disclosures. Notwithstanding anything in the Agreement to the contrary, Business Associate and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this Section 2.7 for a period of six (6) years after termination of the Agreement.

2.8 Business Associate and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Business Associate agrees to comply with the Secretary's guidance on what constitutes "minimum necessary." *See* HITECH § 13405.

2.9 If Business Associate knows of a pattern of activity or practice by Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, Business Associate will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful within a period of 30 days, Business Associate will either: 1) terminate the Agreement, if feasible; or 2) report the problem to the Secretary. . *See* HITECH § 13404(b).

**3. COVERED ENTITY’S OBLIGATIONS**

To the Agreement, add or replace the following provision in the section describing Covered Entity’s obligations:

3.1 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and/or HITECH § 13405(a).

IN WITNESS WHEREOF, the parties have caused this Amendment to the Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

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