

HIPAA Business Associate Agreement Addendum

This Addendum, dated as of _____, 2002 (“Addendum”), is entered into by and between [Business Associate] and _____ (“Customer”). The Addendum is incorporated into and made part of the _____ Agreement, dated _____, _____, between [Business Associate] and Customer.

Pursuant to the _____ Agreement, on behalf of Customer, [Business Associate] performs or assists in the performance of functions and activities involving the use and disclosure of Individually Identifiable Health Information (as defined in 45 C.F.R. § 164.501). Those functions and activities may include [describe activities]. [Business Associate]’s provision of these services may involve the disclosure of Individually Identifiable Health Information by Customer (or another business associate of Customer) to [Business Associate]. Accordingly, [Business Associate] may be considered a “business associate” of Customer under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. §§ 160-164 (“HIPAA’s Privacy Regulations”). This Addendum is intended to meet the requirements of the “business associate” provisions of HIPAA’s Privacy Regulations (at 40 C.F.R. § 164.504(e)), and will govern the terms and conditions under which Customer may disclose or have disclosed to [Business Associate], and [Business Associate] may create, use or receive, Protected Health Information (as defined in 45 C.F.R. § 164.501) (“PHI”) on behalf of Customer.

1.0 General.

1.1 Except as otherwise specified herein, [Business Associate] may make any and all uses and disclosures of PHI necessary for [Business Associate] to perform its obligations for or on behalf of Customer pursuant to the _____ Agreement (including those functions and activities specified above) and as permitted or required by this Addendum or HIPAA’s Privacy Regulations. Information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d)(2) is not subject to the provisions of this Addendum. Customer may disclose PHI to [Business Associate] to create information that is not Individually Identifiable Health Information, whether or not the de-identified information is to be used by Customer.

2.0 Permitted Uses and Disclosures.

2.1 In addition to the uses described in Paragraph 1.1, [Business Associate] may use PHI it received in its capacity as a business associate of Customer, if necessary

(a) for the proper management and administration of [Business Associate], or

(b) to carry out the legal responsibilities of [Business Associate].

2.2 In addition to the disclosures described in Paragraph 1.1, [Business Associate] may disclose PHI it received in its capacity as a business associate of Customer for the purposes described in Paragraph 2.1 if

(a) the disclosure is required by law, or

(b) (i) [Business Associate] obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will be held confidentially and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to such person, and (ii) the person will notify [Business Associate] of any instance of which the person is aware in which the confidentiality of the information has been breached.

3.0 Limitations on Uses and Disclosures. With respect to PHI that (i) Customer discloses to [Business Associate] or (ii) [Business Associate] creates or receives on Customer's behalf, [Business Associate] will not use or further disclose the PHI other than as permitted or required by this Addendum or as required by law.

4.0 Additional Obligations of [Business Associate]. Except as otherwise specified herein, the provisions of this Paragraph 4 apply only to PHI that (i) Customer discloses to [Business Associate] or (ii) [Business Associate] creates or receives on Customer's behalf.

4.1 Safeguards. [Business Associate] will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Addendum.

4.2 Reporting. [Business Associate] will report to Customer any use or disclosure of the PHI by [Business Associate] or any [Business Associate] employee, agent or contractor not provided for by this Addendum of which [Business Associate] becomes aware.

4.3 Agents and Subcontractors. [Business Associate] will assure that any agent or subcontractor to whom [Business Associate] provides PHI received from, or created or received by [Business Associate] on behalf of, Customer agrees to the same restrictions and conditions that apply to [Business Associate] with respect to such PHI.

4.4 Access. [Business Associate] will permit any individual whose PHI is maintained by [Business Associate] in a Designated Record Set (as defined in 45 C.F.R. § 164.501) ("DRS") to have access to inspect and obtain a copy of the PHI about the individual in accordance with 45 C.F.R. § 164.524.

4.5 Amendment of PHI. In accordance with 45 C.F.R. § 164.526, [Business Associate] will make available to an individual for amendment PHI about

that individual that is contained in a DRS and will incorporate any amendments to such PHI.

- 4.6 Accounting. [Business Associate] will make available an accounting of disclosures made by [Business Associate] of that individual's PHI in accordance with 45 C.F.R. § 164.528.
- 4.7 Access to [Business Associate]'s Internal Practices. [Business Associate] will 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, Customer available to the Secretary of the federal Department of Health and Human Services for purposes of determining Customer's compliance with 45 C.F.R. § 164, Subpart E.
- 4.8 Disposition of PHI. The parties agree that the return or destruction of PHI received from, or created or received by [Business Associate] on behalf of, Customer is not feasible and that such PHI must be retained by [Business Associate] for future audits. [Business Associate] will extend the protections provided by this Addendum to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI unfeasible.
- 4.9 Requested Restrictions. Customer will not provide to [Business Associate] any PHI that is subject to any arrangement permitted or required of Customer that may impact in any manner the use or disclosure of PHI by [Business Associate] under this Addendum including, but not limited to, any restriction on the use or disclosure of PHI as provided in 45 C.F.R. § 164.522 and agreed to by Customer.

5.0 Termination. Without limiting the rights of the parties under the _____ Agreement, if Customer determines that [Business Associate] violated a material term of this Addendum, Customer may, at its option, terminate the _____ Agreement. Alternatively, following written notice from Customer setting forth Customer's determination that [Business Associate] materially breached or violated its obligation under this Addendum, Customer may provide [Business Associate] with an opportunity to take reasonable steps to cure the breach or end the violation, as applicable. If [Business Associate]'s attempts to cure the breach or end the violation are unsuccessful, without limiting the rights of the parties under the _____ Agreement, Customer will terminate the _____ Agreement.

6.0 Amendment. If any new state or federal law, rule, regulation or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, the parties agree that this Addendum may be amended in a timely manner and as necessary, in [Business Associate]'s reasonable discretion, to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate the _____ Agreement ___ days after receipt by the other party of written notice of termination.

7.0 Miscellaneous.

- 7.1 Effective Date. The provisions of this Addendum will become effective on April 14, 2003.
- 7.2 Conflict. Except as specifically set forth herein, all terms of the _____ Agreement will continue in full force and effect. In the case of any conflict among the provisions of this Addendum and the _____ Agreement, the terms of this Addendum will prevail.
- 7.3 Terms. This Addendum will be governed by and construed in accordance with the same internal rules and procedures that govern the _____ Agreement.
- 7.4 Survival. This Addendum will survive the expiration or termination of the _____ Agreement and remain in full force and effect for so long as [Business Associate] or any of its agents or contractors remain in possession, pursuant to Paragraph 4.8 hereof, of any PHI that (i) Customer discloses to [Business Associate] or (ii) [Business Associate] creates or receives on Customer's behalf, and will terminate immediately thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date set forth above.

[Business Associate Name]

[Customer's Name]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____