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SAMPLE
BUSINESS ASSOCIATE ADDENDUM

Drafted by William M. Brodhead
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334-2374

This Business Associate Addendum dated _____ is
between _____. (“Covered Entity”), and
_____ (“Business Associate”).

Background

Covered Entity acknowledges that it is subject to the Privacy Rule (45 CFR Parts 160 and 164) issued by the United States Department of Health and Human Services under the authority of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

Business Associate provides services to Covered Entity. The arrangements by which Business Associate renders services to Covered Entity are set forth in a written agreement (“the Services Agreement”). In the course of providing such services to Covered Entity, Business Associate may be required to use or disclose Protected Health Information (“PHI”) of individuals. Terms used in this Business Associate Addendum (“Addendum”) have the same meaning as those terms in 45 CFR Parts 160 and 164.

1. **Legal Effect and Term of this Addendum.**

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This Addendum shall be considered an amendment to the Services Agreement and this Addendum shall become effective on April 14, 2003 and shall remain in effect during the entire period the Services Agreement is in effect. In addition, this Addendum may remain in effect subsequent to the termination of the Services Agreement, as provided in this Addendum.

2. Obligations of Business Associate.

- A. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Addendum, the Services Agreement or as required by law. In case of any conflict between this Addendum and the Services Agreement, this Addendum shall govern.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Addendum.
- C. As required by 45 CFR 164.530(f), Business Associate agrees to mitigate, to the extent practical, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Addendum.
- D. Business Associate agrees to report to Covered Entity in writing any use or disclosure of the Covered Entity's PHI in violation of this Addendum of which it becomes aware within five days of becoming aware of the violation.
- E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, created by or received by Business Associate on behalf of Covered Entity agrees to

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the same restrictions and conditions that apply to Business Associate with respect to such information.

- F. If Business Associate receives PHI from Covered Entity in a designated record set, Business Associate agrees to provide access, at the request of Covered Entity, in a reasonable time and manner, to PHI in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of 45 CFR 164.524.
- G. If Business Associate receives PHI from Covered Entity in a designated record set, Business Associate agrees to make any amendments to PHI in a designated record set that the Covered Entity reasonably directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an individual, and in the time and manner reasonably designated by Covered Entity.
- H. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity available to the Secretary, in the manner lawfully designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- I. Business Associate agrees to document its disclosures of PHI and information related to such disclosures as would be required for

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Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

- J. Business Associate agrees to provide to Covered Entity in a time and manner reasonably designated by Covered Entity, information collected in accordance with this Addendum, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
3. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or
 - B. disclosure would not violate the Privacy Rule if done by Covered Entity.
 - B. Except as otherwise limited in this Addendum, Business Associate may use PHI to carry out the legal responsibilities of Business Associate.
 - C. Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or

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for the purpose for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- D. Except as otherwise limited in this Addendum, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
 - E. Business Associate may use or disclose PHI to report violations of law to appropriate federal and state authorities consistent with 45 CFR 164.502(j)(1).
4. Obligations of Covered Entity
- A. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices, if such limitation may affect Business Associate's use or disclosure of PHI.
 - B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.
 - C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of an individual's PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such restriction may affect Business Associate's use or disclosure of PHI.

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5. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Term and Termination.

- A. Term. The term of this Addendum shall begin as of the date on which it has been signed by both parties but not earlier than April 14, 2003 and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.
- C. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate, Covered Entity shall provide a reasonable opportunity for Business Associate either to cure the breach or end the violation. If Business Associate has breached a material term of this Addendum and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as reasonably specified by Covered Entity, Covered Entity may immediately terminate the Services Agreement.

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C. Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of the Services Agreement for any reason, Business Associate shall return originals and all copies of, or shall destroy, all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
- (2) If Business Associate reasonably determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

NOTE: The wording in Paragraphs C (1) and C (2) above may be changed depending upon whether Covered Entity and Business Associate wish to agree in advance whether, upon termination of its contractual relationship, PHI is to be returned, destroyed or maintained and protected by the Business Associate.

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7. Miscellaneous.

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- B. Amendment. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- C. Survival. The rights and obligations of Business Associate and Covered Entity under the termination provisions of this Addendum shall survive the termination of this Addendum.
- D. Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

AGREED TO ON BEHALF OF
COVERED ENTITY

AGREED TO ON BEHALF OF
BUSINESS ASSOCIATE

By: _____

By: _____

Print Name: _____

Print

Name: _____

Its: _____

Its: _____

Dated: _____

Dated: _____