

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (the "Addendum") is effective upon execution, and is made part of the Agreement (the "Agreement") by and between <insert practice name> ("Organization") and <insert name> ("Business Associate").

Organization and Business Associate mutually agree to incorporate the terms of this Addendum into the Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) ("HIPAA").

A. HIPPA Regulatory Definitions. Capitalized terms used in this Addendum and not otherwise defined herein shall have the meanings set forth in HIPAA, which definitions are hereby incorporated by reference.

B. Privacy of Protected Health Information.

1. Permitted Uses and Disclosures.

Business Associate is permitted or required to use or disclose Protected Health Information it creates or receives for or from Organization only as follows:

Functions and Activities on Organization's Behalf. Business Associate is permitted to use and disclose Protected Health Information it creates or receives for or from Organization to perform functions, activities, or services for or on behalf of Organization as specified in the Agreement.

Business Associate's Operations. Business Associate may use Protected Health Information it creates or receives for or from Organization as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose such Protected Health Information as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if:

- a. The disclosure is required by law; or
- b. Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate will disclose such Protected Health Information that the person or organization will:
 - (i) Hold such Protected Health Information in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
 - (ii) Notify Business Associate (who will in turn promptly notify Organization) of any instance of which the person or organization becomes aware in which the confidentiality of such Protected Health Information was breached.

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2. **Prohibition on Unauthorized Use or Disclosure.** Business associate will neither use nor disclose Protected Health Information it creates or receives for or from Organization or from another business associate of Organization, except as permitted or required by this Addendum, as required by law or as otherwise permitted in writing by Organization.
 3. **Information Safeguards.**
 - a. **Privacy of Organization's Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards, in compliance with Social Security Act § 1173(d) (42 U.S.G. § 1320d-2(d)), 45 Code of Federal Regulations § 164.530(0) and any other implementing regulations issued by the U.S. Department of Health and Human Services to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Protected Health Information created or received for or from Organization. Business Associate will document and keep these safeguards current.
 - b. **Security of Organization's Electronic Protected Health Information.** Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Organization's behalf as required by the Security Rule, 45 C.F.R. Part t 64, Subpart C.
 4. **Sub-Contractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Addendum or in writing by Organization to disclose any of the Protected Health Information Business Associate creates or receives for or from Organization. Business Associate will provide reasonable assurance, evidenced by written contract, that subcontractor or agent will comply with the same privacy and security obligations as Business Associate with respect to such Protected Health Information.
- C. **Compliance with Standard Transactions.** If Business Associate conducts in whole or part Standard Transactions for or on behalf of Organization, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 Code of Federal Regulations Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Organization that:
1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
 2. Adds any data elements or segments to the maximum defined data set;

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3. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
4. Changes the meaning or intent of the Standard Transaction's implementation specification.

D. Protected Health Information Access, Amendment and Disclosure Accounting.

1. **Access.** Business Associate will promptly upon Organization's request make available to Organization or, at Organization's direction, to the individual (or the individual's personal representative) for inspection and obtaining copies any Protected Health Information about the individual which Business Associate created or received for or from Organization and that is in Business Associate's custody or control, so that Organization may meet its access obligations under 45 Code of Federal Regulations § 164.524.
2. **Amendment.** Business Associate will, upon receipt of notice from Organization, promptly amend or permit Organization access to amend any portion of the Protected Health Information which Business Associate created or received for or from Organization, so that Organization may meet its amendment obligations under 45 Code of Federal Regulations §164.526.
3. **Disclosure Accounting.** So that Organization may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528:
 - a. **Disclosure Tracking.** Starting _____(date), Business Associate will record for each disclosure, not excepted from disclosure accounting under Addendum Section C.3(b) below, that Business Associate makes to Organization or a third party of Protected Health Information that Business Associate creates or receives for or from Organization, (i) the disclosure date, (ii)the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the "disclosure information"). For repetitive disclosures Business Associate makes to the same person or entity (including Organization) for a single purpose, Business Associate may provide (x) the disclosure information for the first of these repetitive disclosures, (y) the frequency, periodicity or number of these repetitive disclosures and (z) the date of the last of these repetitive disclosures. Business Associate will make this disclosure information available to Organization promptly upon Organization's request.
 - b. **Exceptions from Disclosure Tracking.** Business Associate need not record disclosure information or otherwise account for disclosures of Protected Health Information that this Addendum or Organization in writing permits or requires (i) for the purpose of Organization's treatment activities, payment activities, or health care operations, (ii) to the

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individual who is the subject of the Protected Health Information disclosed or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, or (vi) to law enforcement officials or correctional institutions regarding inmates.

- c. Disclosure Tracking Time Periods. Business Associate must have available for Organization the disclosure information required by Addendum Section C.3(a) for the 6 years preceding Organization's request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before April 14, 2003).

4. Inspection of Books and Records. Business Associate will make its Internal practices, books, and records, relating to its use and disclosure of the Protected Health Information it creates or receives for or from Organization, available to Organization and to the U.S. Department of Health and Human Services to determine compliance with 45 Code of Federal Regulations Parts 160-64 or this Addendum.

E. Breach of Privacy Obligations.

1. Reporting.

- a. Privacy Breach. Business Associate will report to Organization any use or disclosure of Protected Health Information not permitted by this Addendum or in writing by Organization. Business Associate will make the report to Organization's Legal Department not less than 24 hours after Business Associate learns of such non-permitted or violating use or disclosure. Business Associate's report will at least:
 - (i) Identify the nature of the non-permitted or violating use or disclosure;
 - (ii) Identify the Protected Health Information used or disclosed;
 - (iii) Identify who made the non-permitted or violating use or received the non-permitted or violating disclosure;
 - (iv) Identify what corrective action Business Associate took or will take to prevent further non-permitted or violating uses or disclosures;
 - (v) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted or violating use or disclosure; and
 - (vi) Provide such other information, including a written report, as Organization may reasonably request.
- b. Security Incidents. Business Associate will report to Organization any attempted or successful (i) unauthorized access, use, disclosure,

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modification, or destruction of Company's Electronic Protected Health Information or (ii) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate will make this report upon Organization's request, except if any such security incident resulted in a disclosure of Organization's Protected Health Information not permitted by this Addendum, Business Associate will make the report in accordance with Section E.1(a) above.

2. Termination of the Agreement.

- a. Right to Terminate for Breach. Organization may terminate the Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Addendum. Organization may exercise this right to terminate the Agreement by providing Business Associate written notice of termination, stating the breach of the Addendum that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Organization's notice of termination.
- b. Obligations upon Termination.
 - (i) Return or Destruction. Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate will if feasible return to Organization or destroy all Protected Health Information, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from Organization, including all copies of and any data or compilations derived from and allowing identification of any individual who is a Subject of the Protected Health Information. Business Associate will complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. Business Associate will identify any Protected Health Information that Business Associate created or received for or from Organization that cannot feasibly be returned to Organization or destroyed, and will limit its further use or disclosure of that Protected Health Information to those purposes that make return or destruction of that Protected Health Information infeasible. Within such 30 days, Business Associate will certify on oath in writing to Organization that such return or destruction has been completed, will deliver to Organization the identification of any Protected Health Information for which return or destruction is infeasible and, for that Protected Health Information, will certify that it will only use or disclose such Protected Health Information for those purposes that make return or destruction infeasible.
 - (ii) Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the Protected Health Information it created

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or received for or from Organization will be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

- (iii) Other Obligations and Rights. Business Associate's other obligations and rights and Organization's obligations and rights upon termination, cancellation, expiration or other conclusion of the Agreement will be those set out in the Agreement.

3. **Indemnity.** Business Associate will indemnify and hold harmless Organization and any Organization affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

- a. Right to Tender or Undertake Defense. If Organization is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor, agent, person or entity under Business Associate's control, Organization will have the option at any time either (i) to tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants and other appropriate professionals to represent Organization's interests at Business Associate's expense, or (ii) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.
- b. Right to Control Resolution. Organization will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Organization may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Organization under this Addendum Section 0.3.

F. **General Provisions.**

Amendment. Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to Protected Health Information or Standard Transactions, this Addendum and the Agreement of which it is part will automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.

Conflicts. The terms and conditions of this Addendum will override and control any conflicting term or condition of the Agreement. All nonconflicting terms and conditions of the Agreement remain in full force and effect.

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IN WITNESS WHEREOF, Organization and Business Associate execute this Addendum to be effective on the last date written below.

<INSERT PRACTICE NAME>

<< SIGNEE >>

Date: _____

<INSERT ORGANIZATION NAME>

Print Name/Signature

Date: _____

SAMPLE