

# HIPAA ADDENDUM TO SERVICE AGREEMENT

## Business Associate Trading Partner and Chain of Trust

THIS AGREEMENT made this 29th day of May, 2015, between \_\_\_\_\_, hereafter referred to as “Covered Entity”, and Commercial Acceptance Company, hereafter referred to as “Business Associate.”

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) the Office of the Secretary of the Department of Health and Human Services (“HHS”) has issued regulations governing the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) and Standards for Security of Electronic Protected Health Information (“Security Rule”); and

WHEREAS, pursuant to the privacy provisions of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) , HHS has revised the Security Rule and Privacy Rule, adopted rules relating to breach notification and modified rules pertaining to HIPAA enforcement; and

WHEREAS, the Privacy Rule and Security Rule provide, among other things, that a Covered Entity is permitted to disclose Protected Health Information to a Business Associate and allow the Business Associate to obtain, transmit, receive, and create Protected Health Information on the Covered Entity’s behalf, only if the Covered Entity obtains satisfactory assurance in the form of a written contract, that the Business Associate will appropriately safeguard the Protected Health Information; and

WHEREAS, the Covered Entity and the Business Associate have entered into a Service Agreement pursuant to which the Business Associate creates, maintains, receives, or transmits Protected Health Information on the Covered Entity’s behalf and, accordingly, the parties desire to enter into this Agreement which sets forth the terms under which they shall comply with HIPAA rules;

NOW, THEREFORE, in consideration of the agreements contained herein, the Parties do hereby agree to addend all past, present and future contracts between the parties with the terms of this Agreement and agree as follows:

1. Definitions. Terms used but not otherwise defined in this Agreement shall have the same meaning as in 45 CFR 160.103 and 164.501.
  - (a) HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR 160 and 164.
2. General Provisions.
  - (a) HIPAA Readiness. Business Associate agrees that it will make commercially reasonable efforts to be compliant with the applicable requirements of the HIPAA Rules and, upon Covered Entity’s request, will provide Covered Entity with the written certification of such compliance.
  - (b) Changes in Law. Business Associate agrees that it will make commercially reasonable efforts to comply with any change in the HIPAA Rules by the compliance date(s) established for any such changes and will provide Covered Entity with written certification of such compliance upon Covered Entity’s request.
  - (c) Audit by Secretary of HHS. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity available to HHS upon request for purposes of determining Covered Entity’s compliance with HIPAA.

- (d) Audit by Covered Entity. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity available to Covered Entity within 14 days of Covered Entity's request for purpose of monitoring Business Associate's compliance with this Agreement.
3. Permitted Uses and Disclosures. Business Associate may use and disclose Protected Health Information ("Information") on behalf of or to provide **Collection Services** to the Covered Entity, provided Business Associate shall not use or further disclose any Protected Health Information received from, or created or received on behalf of, Covered Entity, in a manner that would violate the requirements of the Privacy Rule, if done by Covered Entity.
- (a) Except as otherwise limited in this Agreement, the Business Associate may use Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Business Associate agrees to make uses, disclosures, and requests for Information consistent with Covered Entity's minimum necessary policies and procedures.
- (c) Except as otherwise limited in the Agreement, the Business Associate may disclose Information for the proper management and administration of the Business Associate, provided that 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 for the purpose for which it was disclosed to the person, and the person notifies the 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 the Agreement, the Business Associate may use Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- (e) Business Associate may use Information for payment of health care service accounts, as reasonably necessary to secure payment on such accounts.
- (f) Business Associate may use Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
4. Obligations and Activities of Business Associate. The Business Associate will:
- (a) Use or disclose the Information only as permitted by this Agreement or as required by Law;
- (b) Use appropriate safeguards to prevent any other use or disclosure, and comply with Subpart C of 45 CFR 164 with respect to electronic Information, to prevent use or disclosure of the Information other than as provided for by this Agreement;
- (c) Report to the Covered Entity any use or disclosure of the Information not provided for by this Agreement of which it becomes aware and mitigate to the extent practicable the harmful effect of such use or disclosure in violation of this Agreement;
- (d) Ensure that any agent or subcontractor who may receive such Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions on use and disclosure of information imposed by this Agreement, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2);
- (e) At the request of Covered Entity, provide access to Information in a Designated Record Set to Covered Entity, or as directed by Covered Entity, to an Individual as required by 45 CFR 164.524;

- (f) Amend Information in a Designated Record Set as designated by Covered Entity so that Covered Entity may meet its amendment obligations under 45 CFR 164.526;
- (g) Develop, implement, maintain and use appropriate administrative, technical, and physical safeguards to comply with 45 CFR 164.530(c), to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Information transmitted electronically. Business Associate will document and keep safeguards current.
- (h) Accommodate any restriction or use or disclose Protected Health Information and any request for confidential communications to which Covered Entity has agreed or must abide by in accordance with the Privacy Rule.
- (i) Document disclosures of Information in accordance with Covered Entity's accounting requirements in 45 CFR 164.528 and provide such Information as directed by Covered Entity;
- (j) Make available, within fifteen (15) days of receiving a request from Covered Entity, the Information necessary for Covered Entity to make an accounting of Disclosures of Information about an Individual;
- (k) At termination, or upon receipt of written demand, Business Associate will immediately return or destroy all Information received from Covered Entity or creditor or received by Business Associate on behalf of Covered Entity and all copies and magnetic or electronic backups of Information, or if it is feasible to return or destroy Information, protections are extended to such information for so long as Business Associate maintains such Information. This provision also applies to Information in the possession of agents or subcontractors of Business Associate.

5. Obligations of Covered Entity. Covered Entity will:

- (a) Provide Business Associate with Covered Entity's "notices of privacy practices" and all updates that Covered Entity produces in accordance with 45 CFR 164.250, as well as any changes to such notice;
- (b) Notify Business Associate of any limitation(s) in its notice of privacy practices to the extent that such limitation may affect Business Associate's use of disclosure of Information;
- (c) Notify Business Associate of any restriction, change or revocation of permission by Individual to use or disclose Information if it would affect Business Associate's use and disclosures, in accordance with 45 CFR 164.522.
- (d) Not request Business Associate to use or disclose Information if not permissible under the Privacy Rule if done by the Covered Entity.

6. Termination. This Agreement is effective until terminated. Pursuant to the terms of 45 CFR 154.504(e)(2)(iii), Covered Entity may give written notice to immediately terminate this Agreement upon discovery of a material breach provided Business Associate has received an opportunity to cure the breach or end the violation and has failed to do so. This Agreement shall terminate upon the termination of the Service Agreement.

- (a) Return of Protected Health Information. At termination of this Agreement or the Service Agreement, whichever occurs first, Business Associate shall return to Covered Entity and

require its subcontractors to return to Covered Entity, all Protected Health Information received from, or created or received on behalf of, Covered Entity that Business Associate or such subcontractors maintain in any form and shall retain no copies of such information. If such return is not feasible, based solely on Business Associate's discretion, Business Associate shall, and shall require its subcontractors to, destroy such Protected Health Information if permitted by Business Associate and/or extend the protection of this Agreement to such Protected Health Information retained by Business Associate or subcontractors and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

7. Confidentiality, Trading Partners and Chain of Trust. All Information received or created by Business Associate shall be kept confidential and shall be used only as permitted by this Agreement. This provision applies to employees, subcontractors and agents of Business Associate. If Business Associate conducts in whole or part Standard Transactions for or on behalf of Covered Entity, 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 CFR 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 Covered Entity that:
  - (a) Changes the definition, data condition or use of a data element or segment in a Standard Transaction;
  - (b) Adds any data elements or segments to the maximum defined data set;
  - (c) 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
  - (d) Changes the meaning or intent of the Standard Transaction's implementation specification.
8. Indemnity. The parties to this Agreement shall mutually protect, indemnify and hold each other harmless from all claims and damages including attorney's fees, arising from failure of the other party to comply with applicable federal, state and local laws and regulations or the performance of the work and services by that party under this Agreement. This section shall survive termination of this Agreement.
9. No Third Party Beneficiaries. Business Associate and Covered Entity agree that individuals who are the subject of Protected Health Information are not intended to be third party beneficiaries of this Agreement.
10. Amendment. This Agreement may not be amended, altered, or modified unless in writing and signed by the parties who agree to amend as necessary to comply with HIPAA and the Privacy Rule.
11. Parties' Relationship. Nothing in this Agreement shall be construed as creating a Principal/Agency relationship between the Covered Entity and Business Associate.
12. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA Rules.
13. Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Pennsylvania except to the extent federal law applies without regard to conflicts of law rules. The parties hereby submit to the jurisdiction of the courts located in the State of Pennsylvania including any appellate court thereof.

14. Headings. The headings and subheadings of this Agreement have been inserted for convenience of reference only and shall not affect the construction of the provisions of the Agreement.
15. Cooperation. The parties shall agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance with the HIPAA Rules, including procedures designed to mitigate the harmful effects of any improper use or disclosure of Covered Entity's Protected Health Information.

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Commercial Acceptance Company

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date