

**DOCUMENT 45:  
BUSINESS ASSOCIATE ADDENDUM**

## **Business Associate Addendum**

This Business Associate Addendum (the "Addendum") is made effective the \_\_\_ day of \_\_\_, 2007, by and between \_\_\_\_\_ Hospital, Inc., hereinafter referred to as "Covered Entity," and \_\_\_\_\_, hereinafter referred to as "Business Associate" (individually, a "Party" and collectively, the "Parties").

### WITNESSETH:

WHEREAS, Business Associate is developing a secure, electronic patient data exchange system to allow authorized users to electronically access patient information from participating \_\_\_\_\_ health care providers ("Exchange"); and

WHEREAS, NETWORK has entered into an agreement with \_\_\_\_\_ ("Access Provider") and \_\_\_\_\_ ("Host") to develop and maintain Exchange; and

WHEREAS, Covered Entity desires to participate in the Exchange in order to contribute and access patient information for the continuing care and treatment of its patients; and

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality, and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 142, 160 and 164 (the "HIPAA Privacy and Security Rules"); and

WHEREAS, the Parties have entered into a written agreement (the "Agreement") whereby Business Associate will provide certain services to Covered Entity for Exchange and, pursuant to such Agreement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate may have access to Protected Health Information or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities; and

WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity;

THEREFORE, in consideration of the Parties' continuing obligations under the Agreement, Covered Entity's desire to comply with the HIPAA Privacy and Security Rules, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Addendum.

## **I. DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Privacy and Security Rules.

The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. “Protected Health Information” includes, without limitation, “Electronic Protected Health Information,” as defined below.

The term “Electronic Protected Health Information” means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Privacy and Security Rules) or maintained in Electronic Media.

## **II. COORDINATION WITH HIPAA PRIVACY AND SECURITY RULES**

In the event of an inconsistency between the provisions of this Addendum and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Addendum are different than those mandated in the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Addendum shall control.

The Parties agree that, in the event that any documentation of the Agreement contains provisions relating to the use or disclosure of Protected Health Information, which are more restrictive than the provisions of this Addendum, the provisions of the more restrictive documentation will control. The provisions of this Addendum are intended to establish the minimum requirements regarding Business Associate’s use and disclosure of Protected Health Information.

## **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- a. Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.
- b. Business Associate may use Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.
- c. Business Associate may disclose Protected Health Information in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:
  1. The disclosures are required by law; or

2. Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

#### **IV. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Addendum.
- b. Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Addendum, the Agreement, or as required by law.
- c. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Addendum. Specifically, Business Associate will:
  1. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Privacy and Security Rules; and
  2. Report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Addendum, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system; provided, however, that Business Associate shall not have any obligation to notify Covered Entity of any unsuccessful attempts to (i) obtain unauthorized access to Covered Entity's information in Business Associate's possession, or (ii) interfere with Business Associate's system operations in an information system, where such unsuccessful attempts are extremely numerous and common to all users of electronic information systems (e.g., attempted unauthorized access to information systems, attempted modification or destruction of data files and software, attempted transmission of a computer virus).
- d. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.
- e. Business Associate agrees to report to Covered Entity's Privacy Officer any use or disclosure of Protected Health Information not provided for by this Addendum of which Business Associate becomes aware.
- f. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and

conditions that apply through this Addendum to Business Associate with respect to such information.

- g. At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual's request for access to his or her Protected Health Information in accordance with 45 CFR § 164.524 of the HIPAA Privacy Rule.
- h. At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for amendment by Covered Entity in accordance with the requirements of 45 CFR § 164.526 of the HIPAA Privacy Rule.
- i. Business Associate agrees to document any disclosures of Protected Health Information and make available, in a reasonable time and manner, such documentation of disclosures that would be required for Covered Entity to respond to a request for accounting of disclosures, in accordance with 45 CFR §164.528 of the HIPAA Privacy Rule.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary of the Department of Health and Human Services for the purpose of determining Covered Entity's compliance with the HIPAA Privacy and Security Rule, in a time and manner designated by the Secretary.

## **V. OBLIGATIONS OF COVERED ENTITY**

- a. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy Rule.
- b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy Rule, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

## **VI. TERM AND TERMINATION**

- a. Term. The Term of this Addendum shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VI(c), when all of the Protected Health Information 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 such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the Agreement.

- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate, Covered Entity shall provide Business Associate with written notice of the alleged breach pursuant to Section VII(k). Business Associate shall have thirty (30) days after receipt of such notice to correct such breach or to commence corrective action reasonably acceptable to Covered Entity and proceed with diligence to completion. If Business Associate is not able or does not cure the breach within such 30-day period, Covered Entity shall have the right to terminate this Addendum and the Agreement. If termination is not feasible, Covered Entity shall report such violation to the Secretary of the Department of Health and Human Services.
- c. Effect of Termination.
  - 1. Except as provided in paragraph (ii) of this subsection, upon termination of this Addendum, the Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall within 10 days return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the Protected Health Information.
  - 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide within 10 days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## VII. MISCELLANEOUS

- a. **Indemnification.** Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Addendum by Business Associate or subcontractors or agents of Business Associate.
- b. **No Rights in Third Parties.** Except as expressly stated herein or in the HIPAA Privacy and Security Rules, the Parties to this Addendum do not intend to create any rights in any third parties.
- c. **Survival.** The obligations of Business Associate under Section VI(c) of this Addendum shall survive the expiration, termination, or cancellation of this Addendum, the Agreement, and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

- d. **Amendment.** This Addendum may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Addendum to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- e. **Assignment.** Neither Party may assign its respective rights and obligations under this Addendum without the prior written consent of the other Party.
- f. **Independent Contractor.** None of the provisions of this Addendum are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Addendum and any other Agreement between the Parties evidencing their business relationship.
- g. **Governing Law.** This Addendum will be governed by and construed in accordance with the laws of the State of North Carolina notwithstanding its conflicts of laws rules.
- h. **No Waiver.** No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- i. **Interpretation.** Any ambiguity of this Addendum shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.
- j. **Severability.** In the event that any provision of this Addendum is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Addendum will remain in full force and effect.
- k. **Notice.** Any notification required in this Addendum shall be made in writing to the representative of the other Party who signed this Addendum or the person currently serving in that representative's position with the other Party.
- l. **Entire Agreement.** This Addendum constitutes the entire agreement between the Parties with respect to the subject matter hereof. In the event of any inconsistency between this Addendum and any other agreement between the Parties, this Addendum shall supersede for any matter relating to Protected Health Information.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year written above.

**Covered Entity:**

**Business Associate:**

\_\_\_\_\_ **Hospital, Inc.**

\_\_\_\_\_

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

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

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

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