

# ***CSAC-EIA MEDICAL MALPRACTICE CONTRACTORS LIABILITY SURVIVAL GUIDE***



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# **CSAC-EIA MEDICAL MALPRACTICE PROGRAM CONTRACTORS LIABILITY SURVIVAL GUIDE**

**This Guide was prepared to equip EIA Members with Healthcare Facilities to handle liability issues related to medical, professional and service provider Contractors.**

**The Guide covers the following areas:**

- CSAC-EIA Memorandum of Coverage (MOC).**
- List of common medical and non-medical Contractors utilized by EIA Members and related Risk Issues.**
- Intent of coverage under the CSAC-EIA Medical Malpractice Program.**
- HIPAA as it relates to Contractors.**
- Sample HIPAA Business Associate Agreement.**

## **CSAC-EIA MEMORANDUM OF COVERAGE MEDICAL MALPRACTICE PROGRAM**

The Universal Endorsement U-7 (attached) was adopted by the CSAC-EIA Medical Malpractice Program Committee on October 1, 2004.

The MOC expands the Medical Malpractice Coverage to any liability arising out of the operation of a Healthcare Facility, and makes the Medical Malpractice coverage primary to any other MOC.

This MOC also expands liability issues related to contractors, especially as it pertains to non-medical/non-professional contractors.

Claims involving Contractors that would previously appear to be covered from a G.L. Program standpoint, are now covered under the Medical Malpractice program if the liability occurs as part of the operation of a Healthcare Facility.

This new MOC should be taken into consideration in designing and executing contracts.

When a claim is filed against an EIA member, Contractor involvement will be part of the claim investigation process.

Risk Management Services (RMS) as the CSAC-EIA Medical Malpractice Program Claims Administrator, will request a copy of contracts, when it is obvious Contractor liability exists.


The clauses in the contract that RMS will examine closely and evaluate related to the claim/coverage issues are:

- Scope of Services
- Insurance coverage (including additional insured endorsements)
- Hold Harmless and Indemnity/Defense agreements.

## UNIVERSAL ENDORSEMENT U-7

This endorsement, effective **October 1, 2004** at 12:01 A.M. Pacific Standard Time, forms a part of Memorandum No. EIA 04 M2 01 of the CSAC Excess Insurance Authority

Issued to:

  
\_\_\_\_\_  
Authorized Representative

### OTHER COVERAGE ENDORSEMENT

It is understood and agreed that Section VII. Conditions, Condition E. "Other Insurance" is deleted in its entirety and replaced with the following:

- E. **OTHER COVERAGE** – This coverage is excess over any other insurance available to any **Covered Party** and such other insurance shall not be used to reduce the deductible/selfinsured retention hereunder. This clause does not apply to excess insurance written specifically to be in excess of this Memorandum.

Notwithstanding the foregoing paragraph, if, because of liability arising out of or in connection with the operation of any clinic or established health care facility, coverage for damages is available under this Excess Professional Liability and General Liability Memorandum of Coverage ("Medical Malpractice Memorandum") and under another Memorandum of Coverage issued by the Authority, it shall be conclusively presumed that the coverage afforded under the Medical Malpractice Memorandum shall be primary and any coverage available under any other Memorandum of Coverage shall be excess only. For claims to which this provision applies, the full amount of the deductible or self-insured retention under the Medical Malpractice Memorandum shall be owed, regardless of the availability of coverage under any other Memorandum of Coverage.

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability. All other terms and conditions of the Memorandum remain unchanged.

**CSAC Excess Insurance Authority  
Medical Malpractice Programs**

**Outside Contractors and Risk Issues**

<b><u>Contractor Type</u></b>	<b><u>Risks/Concerns</u></b>
Administrators	background, experience, insurance, financial stability
Providers (MDs, RNs, DDSs, MFTs, etc.)	adequate credentialing process (license? National Practitioners Data Bank? background check, references, experience, past med mal claims, etc.)  adequate insurance and proof of coverage for those who provide their own  privacy practices (training?)
Radiologists, pathologists	adequate credentialing, adequate insurance, privacy practices
Medical Schools (interns, residents, trainees)	adequate credentialing, background checks, supervision, insurance, privacy training
Recreation therapists, crafts instructors, dance, music, others who provide quasi-clinical services or direct patient services (e.g., beauticians in SNFs)	experience, background checks, credentials
Laboratories	licensing, accuracy
Pharmacy services	accuracy, billing practices
Translators	privacy issues
Funeral homes	license, privacy issues, insurance
Security	training, experience, privacy issues, background checks
Sitters (1:1 security for mental health etc.)	training, experience, privacy issues, background checks

Transportation individuals/companies (EMS, air evacuation, automobile)	auto/air/other accident insurance training, experience, privacy issues, background checks
Records copying/storage	privacy issues, experience, insurance, policies/procedures for access 24/7 to stored records
Housekeeping/laundry	training, experience, privacy issues, background checks, blood borne and airborne pathogens training, lost property training and policies
Food services/catering	licensing, lost property, privacy
Temporary agencies for clerical, nursing, med records, security, other staffing, etc.	credentials, background checks, training, privacy practices
Landscaping	privacy issues, training re: locked gates and pruning tools etc. in Psych Facilities
Pest Control	precautions for patients, other safety Issues, privacy, licenses
Construction/ earthquake retrofit	patient safety, privacy issues, licenses
Heating, cooling, sprinklers, paint, carpets, electrical	patient safety, privacy issues, licenses
Fire alarm, other alarm systems (e.g., nursery security, Alzheimer's alarms at front doors, etc.)	privacy, safety, licenses, insurance
Engineers and equipment monitoring	privacy, safety, licenses, insurance
Suppliers: gases, drugs, sterile supplies, laundry, sterile solutions (saline, Ringers, etc.), surgical supplies and implants, tissue suppliers, blood banks	licenses, insurance, safety record
Auditors, lawyers, public relations firms, advertising, marketing, credentialing services, human resources, peer reviewers, claims adjusting, financial advisors, CPA's, risk management	licenses, insurance, privacy, Business Associate Agreements

NOTE: Many of those listed will need HIPAA Business Associate Agreements if their work requires contact with Protected Health Information; however, those who work directly with clients/patients providing clinical services are Covered Entities themselves and do not need Business Associate Agreements.

## **CONTRACTOR COVERAGE UNDER THE CSAC-EIA MEDICAL MALPRACTICE PROGRAM**

Coverage provided by EIA Members to Contractors under the Medical Malpractice Program is flexible and defined by the contract between the EIA Member and the Contractor. The contract between the EIA Member and Contractor is the governing document as it relates to coverage.

**Because of this special attention should be paid in executing a contract that covers the Contractor under the EIA Members Medical Malpractice.**

SCOPE OF SERVICES – should define:

- Where services are to be preformed (i.e. Hospital, Clinic, etc.)
- Who is to be treated – traditionally this would relate to a “county patient”. A county patient would be defined as an individual who seeks treatment at a County facility and where the County receives compensation for services or is required by statute to provide medical services (i.e. medically indigent, inmates, etc.).
- In the case of non-medical Contractors, specifically define the Contractors duties and obligation to perform.

INSURANCE COVERAGE – should define:

- Limit of Coverage.
- Contractor is not a named insured under EIA Member coverage.
- Responsibility of Contractor to report incidents.
- Contractor must cooperate with adjusters and defense counsel.
- That intentional or criminal acts are not covered.
- Identify any outside activities the Contractor may be involved in (i.e. private practice, consulting, volunteer work, etc.) and exclude these activities as appropriate from EIA Member coverage.

**In contracts where the contractor is to provide their own coverage, the contract should define the following:**

- Contractor’s absolute obligation to defend and indemnify the EIA Member for negligent acts performed by the Contractor. This should cover the issue of the parties named in the claim and the lawsuit. Often claims and lawsuits will name only the EIA member. Carriers for the Contractor will many times balk at providing coverage since the Contractor or their individual employees are not named. The contract should address this issue in the Defense and Indemnity section.
- Require additional insured endorsements. This seems at times to be overlooked in Healthcare related contracts.
- Attempt to design the Hold Harmless agreement terms specific to the Contractors scope of duties, rather than a general agreement.

**CSAC Excess Insurance Authority  
Medical Malpractice Programs**

**Contractors, HIPAA Business Associate Agreements**

**HIPAA Business Associate Agreements - Overview**

The HIPAA Privacy Rule states that a covered entity (e.g., a County medical provider) may disclose protected health information (PHI) to a business associate (BA), and may allow a BA to create or receive PHI on its behalf, if there is a written business associate agreement, arrangement, or contract in place.

The Business Associate requirement does not apply to disclosures by a covered entity to a health care provider concerning the treatment of the patient.<sup>1</sup> So, for example, a County health care provider would not need a BA agreement with contracted physicians, dentists, pathologist, radiologists, pharmacists, or interns who provide treatment to County patients.

A County health care provider also would not need a BA agreement with a housekeeping contractor, painter, electrician, plumber, or pest control company since there would be no disclosure of PHI to those entities -- in fact, health care providers have many contractors whose work would not (and should not) involve disclosure of patient's names, diagnoses or treatment plans.

A County health care provider who violates the Business Associate agreement requirement would be "in noncompliance" with the standards. Noncompliance with the standards can have serious consequences: HIPAA provides for fines up to \$250,000 and criminal penalties up to ten years in prison. California law (e.g., Confidentiality of Medical Information Act) provides for penalties in addition to any other remedies available at law (e.g., the federal HIPAA penalties) and state penalties are similar to the federal scheme in that they involve both civil and criminal penalties. The DHHS Office for Civil Rights (OCR) has responsibility for enforcing HIPAA. The victim of a privacy breach can also sue for damages.

The HIPAA Privacy Rule and HIPAA security rule can be accessed via the Risk Management Services website ([www.rmsscotati.com](http://www.rmsscotati.com)) by clicking on the "links" button and scrolling to "Confidentiality" and clicking on HIPAA Privacy Rule or HIPAA Security Rule. The pertinent sections dealing with Business Associate Agreements can be found at 45 CFR 164.502(e) and 45 CFR 164.504(e).

A sample Business Associate Agreement can be downloaded from the California Hospital Association website at [www.calhealth.org](http://www.calhealth.org) by clicking on "Publications" and then clicking on "Posters and Forms" and scrolling down to the sample Business Associate Agreement. Another sample BA Agreement can be found at the RMS website (at [www.rmsscotati.com](http://www.rmsscotati.com)) by clicking on "Forms & Documents" and then clicking on Sample Business Associate Agreement.

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<sup>1</sup> Business Associate Agreements are also not needed with respect to disclosures by a health plan to the plan sponsor, or with respect to uses or disclosures by a government program providing health benefits if eligibility or enrollment in the plan is done by another agency or if the PHI used to determine eligibility or enrollment in the plan is collected by another agency if that activity is authorized by law.

## HIPAA BUSINESS ASSOCIATE ADDENDUM

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*This form contract is offered for informational purposes only and does not constitute legal advice or a comprehensive guide to issues to be considered in entering into a business associate contract.*

*This form applies to the relationship between a HIPAA covered entity and its business associate. Optional provisions not required by the HIPAA Privacy Rule are highlighted in italics. As an alternative, the provisions of this Addendum may be incorporated directly into the underlying contract.*

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This HIPAA Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between Covered Entity (“CE”) and Business Associate (“Associate”), and is effective as of the compliance date of the Privacy Rule (defined below) (the “Addendum Effective Date”).

### RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule (defined below) requires Associate to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions.**
  - a. **Business Associate** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

- b. **Covered Entity** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
  - c. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
  - d. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
  - e. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
  - f. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.
  - g. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501. [45 CFR §§ 160.103 and 164.501]
  - h. **Protected Information** shall mean PHI provided by CE to Associate or created or received by Associate on CE's behalf.
2. **Obligations of Associate.**
- a. **Permitted Uses.** Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE, *except that Associate may use Protected Information (i) for the proper management and administration of Associate, (ii) to carry out the legal responsibilities of Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of CE.* [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)]
  - b. **Permitted Disclosures.** Associate shall not disclose Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum, or in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, *except that Associate may disclose Protected Information (i) for the*

*proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate*

*(iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of CE.*

To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

- c. **Appropriate Safeguards.** Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this Contract. [45 CFR § 164.504(e)(2)(ii)(B)] *Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.*
- d. **Reporting of Improper Use or Disclosure.** Associate shall report to CE *in writing* of any use or disclosure of Protected Information otherwise than as provided for by the Contract and this Addendum *within five (5) days* of becoming aware of such use or disclosure. [45 CFR § 164.504(e)(2)(ii)(C)]
- e. **Associate's Agents.** Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree *in writing* to the same restrictions and conditions that apply to Associate with respect to such PHI. [45 CFR § 164.504(e)(2)(D)] *Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. (See 45 CFR §§ 164.530(f) and 164.530(e)(1))*
- f. **Access to Protected Information.** Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying *within ten (10) days of a request by CE* to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524. [45 CFR § 164.504(e)(2)(ii)(E)]

**g. Amendment of PHI.** *Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate*

*must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE. [45 CFR § 164.504(e)(2)(ii)(F)]*

**h. Accounting Rights.** *Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528, as determined by CE. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum. [45 CFR §§ 164.504(e)(2)(ii)(G) and 165.528]*

**i. Governmental Access to Records.** Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Associate's compliance with the Privacy Rule. [45 CFR § 164.504(e)(2)(ii)(H)] *Associate shall provide to CE a copy of any*

*Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.*

- j. **Minimum Necessary.** *Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [45 CFR § 164.514(d)(3)]*
- k. **Data Ownership.** *Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.*
- l. **Retention of Protected Information.** *Notwithstanding Section 3.c of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the*  
  
*information required under Section 2.h of this Addendum for a period of six (6) years after termination of the Contract. (See 45 CFR §§ 164.530(j)(2) and 164.526(d). [Note: Section 164.530(j)(2) requires retention of records for six years from their creation, but the standard of six years after termination of the Contract may be easier to implement.]*
- m. **Associate's Insurance.** *(If there is an insurance provision in the Contract, consider whether it is adequate to address risks associated with Associate's use and disclosure of Protected Information under the Addendum.)*
- n. **Notification of Breach.** *During the term of this Contract, Associate shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. (This provision should be negotiated.)*
- o. **Audits, Inspection and Enforcement.** *Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access*

*during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Contract. (This provision should be negotiated.)*

### 3. **Termination.**

a. **Material Breach.** A breach by Associate of [any/any material] provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for *immediate* termination of the Contract by CE pursuant to Section [*termination for breach section*] of the Contract. [45 CFR § 164.504(e)(2)(iii)]

b. **Judicial or Administrative Proceedings.** *CE may terminate this Contract, effective immediately, if (i) Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.*

c. **Effect of Termination.** Upon termination of this Contract for any reason, Associate shall, at the option of CE, return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(ii)(2)(I)] *If CE elects destruction of the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.*

4. **Indemnification.** *[If there is an indemnification provision in the Contract, consider whether it is sufficient to address potential liabilities arising from breach of the terms of the Addendum.]*

5. **Limitation of Liability.** *[A covered entity may wish to seek an exception to any limitation of liability provision for the benefit of the business associate with*

*regard to damages related to a breach of the business associate's privacy or security obligations under the Contract.]*

6. **Disclaimer.** *CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.*
  
7. **Certification.** *To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.*
  
8. **Amendment.**
  - a. **Amendment to Comply with Law.** *The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Contract may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such*

*action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.*
  
  - b. **Amendment of Attachment A.** *Attachment A may be modified or amended by mutual agreement of the parties at any time without amendment of this Contract.*

- 9. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Contract, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.
- 10. **No Third Party Beneficiaries.** Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 11. **Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.
- 12. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

COVERED ENTITY

ASSOCIATE

\_\_\_\_\_

\_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A to  
HIPAA BUSINESS ASSOCIATE ADDENDUM**

If there are no additional terms, it is not necessary to use this Attachment. This Attachment may be executed after the parties have entered into the Addendum to reflect additional specifications relating to the use or disclosure of Protected Information.

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This Attachment sets forth additional terms to the Addendum to the [FULL NAME OF CONTRACT] (“Contract”) by and between CE and Associate, dated \_\_\_\_\_, and is effective as of \_\_\_\_\_ (the “Attachment Effective Date”). This Attachment may be amended from time to time as provided in Section 8.b. of the Addendum.

1. **Additional Permitted Uses.** In addition to those purposes set forth in Section 2.a. of the Addendum, Associate may use Protected Information as follows: \_\_\_\_\_

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2. **Additional Permitted Disclosures.** In addition to those purposes set forth in Section 2.b. of the Addendum, Associate may disclose Protected Information as follows: \_\_\_\_\_

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3. **Subcontractor(s).** The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under the Contract and the Addendum: \_\_\_\_\_

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4. **Receipt.** Associate's receipt of Protected Information pursuant to the Contract and Addendum shall be deemed to occur as follows, and Associate's obligations under the Addendum shall commence with respect to such PHI upon such receipt: \_\_\_\_\_

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5. **Additional Restrictions on Use of Data.** CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: \_\_\_\_\_

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6. **Additional Terms.** *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security or privacy specifications, de-identification or re-identification of data and other additional terms.]* \_\_\_\_\_

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COVERED ENTITY

ASSOCIATE

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_