

Business Associate Addendum

This Business Associate Addendum (“BAA”) supplements and is made part of that certain agreement (“Agreement”), which incorporates this Addendum by reference, by and between HealthTech Management Services, Inc., 405 Duke Drive, Suite 210, Franklin, Tennessee 37067 (“Entity”) and Contractor (as defined in the Agreement).

The parties enter into this BAA in order to comply with the Entity’s contractual and statutory obligations related to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (“ARRA”) and their implementing privacy and security regulations set forth at 45 C.F.R. Parts 160 and 164 (the “Privacy and Security Rule”). Entity contracts to provide certain services to, and is considered a Business Associate of, certain of its customers (“Clients”) that are subject to the Privacy and Security Rule. As a Business Associate of its Clients, Entity is required to obligate its subcontractors to the terms of this BAA. Contractor is a subcontractor of Entity and may create or receive PHI (as defined below) in providing services to Clients. Therefore, Entity and Contractor desire to enter into this BAA in order to set forth the permitted uses and disclosures of PHI by Contractor. To the extent Contractor is to carry out an obligation of a Covered Entity under the Privacy and Security Rule, Contractor shall comply with the requirements of the Privacy and Security Rule that apply to Covered Entities in the performance of such obligation.

1. **Definitions.** Capitalized terms not otherwise defined in this BAA shall have the meaning set forth in the Privacy and Security Rule. References to “PHI” mean Protected Health Information created or received by Contractor (directly or indirectly) for or from Entity or its Clients.
2. **Uses or Disclosures.** Contractor will neither use nor disclose PHI except as permitted or required by this BAA or as Required By Law. Contractor will not sell PHI or use or disclose PHI for purposes of marketing or fundraising, as defined and proscribed in the Privacy and Security Rule and ARRA. Contractor is permitted to use and disclose PHI:
 - (i) to perform any and all obligations of Contractor as agreed upon by the parties, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entities directly;
 - (ii) as necessary for Contractor’s proper management and administration and to carry out Contractor’s legal responsibilities (collectively “Contractor’s Operations”), provided that Contractor may only disclose PHI for Contractor’s Operations if the disclosure is Required By Law or Contractor obtains reasonable assurance, evidenced by a written contract, from the recipient that the recipient will: (1) hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the recipient or as Required By Law; and (2) notify Contractor of any instance of which the recipient becomes aware in which the confidentiality of such PHI was breached.

In the event Entity notifies Contractor of a restriction request that would restrict a use or disclosure otherwise permitted by this BAA, Contractor shall comply with the terms of the restriction request.

3. **Information Safeguards.** Contractor will maintain appropriate administrative, technical and physical safeguards to prevent use or disclosure of PHI not permitted by this BAA. Contractor will also maintain administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI and that comply with the requirements applicable to Covered Entities under the Privacy and Security Rule, including the documentation requirements. Without limiting the foregoing, Contractor shall

ensure that all electronic PHI that Contractor transmits to Entity or (as permitted by this BAA) to any third party is rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by the Secretary of Health and Human Services (“Secretary”) in accordance with ARRA.

4. **Additional Obligations.** Unless Entity gives its prior, express written consent, Contractor shall not disclose any PHI to any agent, subcontractor or other person or entity that is located or organized outside of the United States of America. Further, Contractor agrees not to allow any PHI to be transmitted to, received by, or stored at any location outside of the United States of America and not to permit any person outside of the United States of America to access or view PHI. Unless Entity gives its prior, express written consent, Contractor shall not de-identify any PHI except as necessary to perform its obligations under the Agreement or for Contractor’s Operations. Contractor shall train or adequately inform its employees, agents and subcontractors regarding its obligations to handle PHI confidentially.
5. **Subcontractors and Agents.** Contractor will require any of its subcontractors and agents, to which Contractor discloses any PHI, to agree to comply in writing with the same privacy and security obligations as set forth in this BAA.
6. **Minimum Necessary.** Contractor represents that the PHI requested, used or disclosed by Contractor shall be the minimum amount necessary to carry out the purposes agreed upon by the parties. Contractor will limit its uses and disclosures of, and requests for, PHI (i) when practical, to the information making up a Limited Data Set; and (ii) in all other cases subject to the requirements of 45 CFR § 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
7. **Access and Amendment.** Contractor shall permit Entity or, at Entity’s request, an individual (or the individual’s personal representative) to inspect and obtain copies of any PHI about the individual that is in Contractor’s custody or control and that is maintained in a Designated Record Set in the manner requested by Contractor. Upon request, such PHI shall be provided in electronic form. Contractor will, upon receipt of notice from Entity, promptly amend or permit Entity access to amend any portion of PHI so that Clients may meet their amendment obligations under 45 CFR § 164.526. Contractor will notify Entity of any request (including but not limited to subpoenas) that Contractor receives for access or amendment to PHI within five (5) business days of receipt of such request.
8. **Disclosure Accounting.** Except for disclosures excluded from the accounting obligation by the Privacy and Security Rule and regulations issued pursuant to ARRA, Contractor will record for each disclosure that Contractor makes of PHI the information necessary for a Covered Entity to make an accounting of disclosures pursuant to the Privacy and Security Rule. Contractor will make this information available to Entity promptly upon Entity’s request for the period requested, but for no longer than the six (6) years preceding Entity’s request for the information (except Contractor need not have any information for disclosures occurring before the effective date of any previous HIPAA business associate agreements between the parties or, if none, the Effective Date of this BAA).
9. **Inspection of Books and Records.** Contractor will make its internal practices, books, and records, relating to its use and disclosure of PHI available upon request to Entity or the Secretary to determine the compliance of Entity’s Clients with the Privacy and Security Rule. To the extent permitted by law, Contractor shall notify Entity immediately upon receipt of a request from the Secretary or other regulatory agency to access Contractor’s internal practices, books or records relating to PHI.

10. **Reporting.** To the extent Contractor becomes aware or discovers any of the following, Contractor shall promptly report the following to Entity: any use or disclosure of PHI not permitted by this BAA, any Security Incident involving electronic PHI, and any Breach of Unsecured Protected Health Information. Such reports shall be made within 24 hours of Contractor becoming aware of or discovering the Breach, incident or other reportable item. Contractor will be deemed to have discovered a Breach, incident or other reportable item if the item is known, or would have been known by exercising reasonable diligence, to Contractor or any employee or agent of Contractor. Contractor will implement appropriate monitoring of Contractor's employees and agents and require Contractor's employees and agents to report actual or suspected Breaches, non-permitted uses and disclosures and Security Incidents. All reports of Breaches shall include the information specified at 45 CFR § 164.410. At Contractor's expense, Contractor shall take reasonable steps as requested by Entity or its Clients to respond appropriately to, assist in any investigation by a government agency and mitigate any harm caused by any item required to be reported pursuant to this provision. In addition, Contractor shall promptly reimburse Entity and Clients all reasonable costs incurred by Entity and such Clients, respectively, with respect to providing notification of a Breach involving Contractor, including but not limited to printing, postage costs and toll-free hotline costs, whether such costs are incurred directly by Entity or Clients or as a result of Entity reimbursing the affected Clients for their costs.

11. **Term and Termination.**

11.1 **Term.** This BAA shall be effective as of the Effective Date and shall remain in effect until termination of the parties' relationship as described in this BAA. Notwithstanding the foregoing, if Entity determines that Contractor has breached a material term of this BAA or any other agreement between the parties to which it applies, Entity may terminate this BAA and any other agreement between the parties to which it applies effective upon thirty (30) days notice to Contractor, unless Contractor cures such breach to Entity's satisfaction within such thirty (30) day period, or Entity may terminate this BAA and any other agreement to which it applies immediately upon notice to Contractor if Entity determines cure is not possible. If termination is not feasible, Entity shall report the breach to the Secretary.

11.2 **Obligations upon Termination.** Upon termination of this BAA for any reason, Contractor will, if feasible and at no cost to Entity, return to Entity or securely destroy all PHI maintained by Contractor in any form or medium, including all copies of such PHI. Further, Contractor shall recover any PHI in the possession of its agents and subcontractors and return to Entity or securely destroy all such PHI. In the event that Entity and Contractor determine that returning or destroying any PHI is infeasible, Contractor may maintain such PHI but shall continue to abide by the terms and conditions of this BAA with respect to such information and shall limit its further use or disclosure of such information to those purposes that make return or destruction of the information infeasible.

11.3 **Survival.** Upon termination of this BAA for any reason, all of Contractor's obligations under this BAA shall survive termination and remain in effect (a) until Contractor has completed the return or destruction of PHI as required by Section 11.2 herein and (b) to the extent Contractor retains any PHI pursuant to Section 11.2.

12. **Indemnification.** Contractor shall indemnify, defend and hold Entity, Clients and their respective officers, directors, employees, agents, successors and assigns harmless, from and

against any and all losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Claims") arising from or related to: (i) the use or disclosure of PHI in violation of the terms of this BAA or applicable law, (ii) any Breach of Unsecured Protected Health Information and/or breach involving individually identifiable information under state law; and (iii) any alleged or actual violation by Contractor, its agents or subcontractors of the terms of this BAA or applicable law. If Contractor assumes the defense of a Claim, Entity shall have the right, at its expense, to participate in the defense of such Claim. Contractor shall not take any final action with respect to any Claim without the prior written consent of Entity. To the extent permitted by law, Contractor shall be fully liable to Entity for any acts, failures or omissions of Contractor's agents or subcontractors related to PHI as if they were Contractor's own acts, failures or omissions.

13. **General Provisions.** In the event that any law, final regulation or amendment to final regulations is promulgated by HHS or other government regulatory authority with respect to PHI or is enacted by legislative authority, the parties shall negotiate in good faith to amend this BAA to remain in compliance with such law and/or regulations, and Contractor shall promptly amend its contracts, if any, with subcontractors and agents to conform to the terms of this BAA. In the absence of any such amendment between Entity and Contractor, this BAA shall be amended as a matter of law to conform to the requirements of law. Any ambiguity in this BAA shall be resolved to permit Entity and Clients to comply with the Privacy and Security Rule. Nothing in this BAA shall be construed to create any rights or remedies in any third parties or any agency relationship between the parties. A reference in this BAA to a section in the Privacy and Security Rule means the section as in effect or as amended. The terms and conditions of this BAA override and control any conflicting term or condition of any other agreement between the parties to which it applies and replace and supersede any previously entered business associate agreements between the parties. All non-conflicting terms and conditions of the Agreement remain in full force and effect.