



PERMANENT MEMORANDUM 36

ATTACHMENT 4 – BUSINESS ASSOCIATE CONTRACT ADDENDUM

On this ____ Day of _____, 20____, the undersigned, **[Name of Covered Entity]** ("Covered Entity") and **[Name of Business Associate]** ("Business Associate") have entered into this "Business Associate Contract Addendum" ("Addendum") for the purposes herein set forth.

I. BUSINESS ASSOCIATE RELATIONSHIP

- A. Covered Entity and Business Associate are parties to that certain contract, denominated "[Name of underlying contract], dated.....("the Agreement"), and pursuant to which Business Associate is performing functions or tasks on behalf of Covered Entity.
- B. Covered Entity is bound by the regulations implementing the Health Insurance Portability and Accountability Act of 1996, P. 1. 104-191 ("HIPAA"), 45 C.F.R. Parts 160 and 164 ("the Privacy Rule"). The intent and purpose of this Addendum is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§ 164.502(e) and 164.504(e).
- C. In the performance of this Agreement, Business Associate is performing functions on behalf of Covered Entity which meet the definition of "Business Associate Activities" in 45 C.F.R. § 160.103, and therefore Business Associate is a "Business Associate" of Covered Entity.
- D. In order for Business Associate to perform its obligations under the Agreement, Covered Entity must disclose to Business Associate certain Protected Health Information (as defined in 45 C.F. R. §160.103) that is subject to protection under HIPAA and the Privacy Rule.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, and in furtherance of the mutual intent of the parties to comply with the requirements of the Privacy Rule, the parties agree as follows:

II. DEFINITIONS

A. Protected Health Information

"Protected Health Information" shall have the meaning found in 45 C.F.R. '160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" may also be referred to as "PHI".

B. Secretary

"Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Terms used in this Addendum, but not otherwise defined herein, shall have the same meaning

as in the Privacy Rule.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Business Associate agrees not to use or disclose PHI other than as stated in this Agreement this Addendum or as Required By Law.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for in this Addendum. Business Associate acknowledges receipt of a copy of Covered Entity's policies and procedures for safeguarding PHI, and agrees to implement substantially identical safeguards for PHI in its possession.
- C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- D. Business Associate agrees to report promptly to Covered Entity any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware.
- E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI 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.
- F. Business Associate agrees to provide access, at the request of Covered Entity, and in a prompt and timely manner, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524.
- G. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual.
- H. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a prompt and timely manner or as designated by the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- I. Business Associate agrees to document such disclosures of PHI as would be required for Covered Entity to respond timely to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- J. Business Associate agrees that, in requesting PHI from Covered Entity, and in using or disclosing PHI to others, only the Minimum Necessary information shall be requested, used or disclosed.

IV. HIPAA SECURITY REQUIREMENTS EFFECTIVE APRIL 20, 2005

Business Associate agrees to:

- A. implement and document, as set forth in 45 C.F.R. § 164.316, Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity, as required by 45 C.F.R. Part 164, Subpart C, and specifically, but not exclusively, including the following:
 - 1. Ensure the confidentiality, integrity, and availability of all electronic protected health information the Business Associate creates, receives, maintains, or transmits on behalf of LSU;
 - 2. Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;
 - 3. Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under the HIPAA Privacy Regulations;
 - 4. Ensure compliance with this Section by its workforce;
- B. ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement and document reasonable and appropriate Administrative Safeguards, Physical Safeguards and Technical Safeguards, including at least the requirements set forth in this Section for Business Associate;
- C. report to LSU any Security Incident of which it becomes aware;
- D. make its policies and procedures, and documentation required by this Section relating to such safeguards, available to the Secretary and to LSU for purposes of determining the Business Associate's compliance with this Section; and
- E. authorize termination of the contract or other relationship by LSU if LSU determines that the Business Associate has violated a material term of the contract or this Business Associate Addendum.

For the purposes of this Section, the following terms have the meaning assigned to them below:

Administrative Safeguards means administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Business Associate's workforce in relation to the protection of that information, as more particularly set forth in 45C.F.R. § 164.308.

Physical Safeguards means physical measures, policies, and procedures to protect Business Associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion, as more particularly set forth in 45 C.F.R. § 164.310.

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.

Technical Safeguards means the technology and the policy and procedures for its use that protect electronic protected health information and control access to it, as more particularly set forth in 45 C.F.R. § 164.312.

Terms used in this Section but not defined herein shall have the meaning assigned to such terms by 45 C.F.R. Part 164, Subpart C, specifically including, but without limitation, 45 C.F.R. § 164.304.

V. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- A. Except as otherwise prohibited by law or limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity or the Privacy Rule, including, but not limited to the following:
 - 1. Use or disclose PHI for proper management and administration or to carry out the legal responsibilities 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. Entities to which Business Associate discloses PHI for the purpose of management and administration of the Business Associate shall be deemed "agents" or "subcontractors" of Business Associate, within the meaning of Section 3(e) of this Addendum.
 - 2. Use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e) (2) (i) (B).

VI. OBLIGATIONS OF COVERED ENTITY

- A. Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Business Associate acknowledges that it has received a copy of Covered Entity's Notice of Privacy Practices, and agrees to comply with all limitations on use and disclosure of PHI contained therein.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any changes in Covered Entity's Notice of Privacy Practices.

VII. TERM AND TERMINATION OF AGREEMENT

- A. Term

The Term of this Addendum shall be effective as of the date of execution by the last party executing same, and shall terminate 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 it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause

Notwithstanding any other provisions of this Agreement, upon Covered Entity's knowledge of a material breach by Business Associate of the terms of this Addendum, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach. Covered Entity may terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
3. If neither termination nor cure is feasible in the sole discretion of Covered Entity, Covered Entity shall report the violation to the Secretary.

C. Effect of Termination

Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall not retain copies of any PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

1. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall notify Covered Entity of this determination and its reasons. If Covered Entity agrees that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures, for so long as Business Associate maintains such PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VIII. MISCELLANEOUS

A. Regulatory References

Any reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

B. Formal Amendment and Deemed Amendment

The Parties agree to take such action as is necessary to formally amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191. Regardless of the execution of a formal amendment of this Addendum, the Addendum shall be deemed amended to permit the Covered Entity to comply with HIPAA and the Privacy Rule, as the same may be hereafter amended or interpreted.

C. Survival

The respective rights and obligations of Business Associate under Section 6 (c) of this Addendum entitled "Effect of Termination" shall survive the termination of this Addendum and/or the Agreement.

D. Interpretation

Any ambiguity in this Addendum shall be resolved to permit Covered Entity to comply with the Privacy Rule.

E. Material Breach of Addendum as Breach of Agreement

Any material breach of this Addendum by Business Associate shall constitute a material breach of the Agreement, and shall entitle Covered Entity to any of the remedies provided in the Agreement, in addition to the remedies provided herein.

F. Provisions of Addendum to Control

In the event of any conflict between the provisions of this Addendum and any of the other provisions of the Agreement, including any renewal, extension or modification thereof, the provisions of this Addendum shall control.

G. Ownership of PHI

The PHI to which Business Associate, or any agent or subcontractor of Business Associate has access under the Agreement shall be and remain the property of Covered Entity.

H. Indemnification and Contribution

Each party to this Addendum shall indemnify and hold the other harmless from any and all claims, liability, damages, costs and expenses, including attorney's fees and costs of defense and attorney's fees, resulting from the action or omission of the other party. In the event that any liability, damages, costs and expenses arise as a result of the actions or omissions of both parties, each party shall bear such proportion of such liability, damages, costs and expenses as are attributable to the acts or omissions of such party.

I. Injunctive Relief

Notwithstanding any rights or remedies provided for in this Agreement, Covered Entity retains all rights to seek injunctive relief to prevent or stop the inappropriate use or disclosure of PHI directly or indirectly by Business Associate, or any agent or subcontractor of Business Associate.

J. Attorney's Fees

If any legal action or other proceeding is brought for the enforcement of this Addendum or in connection with any of its provisions, the prevailing party shall be entitled to an award for the attorney's fees and costs incurred therein in addition to any other right of recovery.

K. Severability

If any clause or provision of this Addendum is held to be illegal, invalid or unenforceable under any present or future law, the remainder of this Addendum will not be affected thereby. It is the intention of the parties that, if any such provision is held to be illegal, invalid or unenforceable, there will be substituted in lieu thereof a provision as similar in terms to such provision as is possible which is legal, valid and enforceable.

L. Waiver of Provisions

Failure by either party at any time to enforce or require the strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of such terms or conditions or modify such provision or in any manner render it unenforceable as to any other time or as to any other occurrence. Any specific waiver by either party of any of the terms and conditions of this Agreement shall be considered a one-time event and shall not constitute a continuing waiver. Neither a waiver nor any failure to enforce shall in any way affect or impair the terms or conditions of this Agreement or the right of either party to avail itself of its remedies.

M. Choice of Law

To the extent not preempted by HIPAA or the Privacy Rule, the Laws of the State of Louisiana shall govern this Addendum.

N. Notices

Any notice, demand or communication required or permitted to be given by any provision of this Addendum shall be in writing and will be deemed to have been given when actually delivered (by whatever means) to the party designated to receive such notice, or on the next business day following the day sent by overnight courier, or on the third (3rd) business day after the same is sent by certified United States mail, postage and charges prepaid, directed to the addresses noted below, or to such other or additional address as any party might designate by written notice to the other party, whichever is earlier. Notices required by this Addendum shall be sent as follows:

Covered Entity	Business Associate
Name:	Name:
Institution:	Institution:
Address:	Address:
City, State Zip Code:	City, State Zip Code:
Copy to:	Copy to:
Name:	Name:
Institution:	Institution:
Address:	Address:
City, State Zip Code:	City, State Zip Code:

THUS DONE AND SIGNED on the date first written above:

Name of Covered Entity: _____

By: _____

Title: _____

Name of Business Associate: _____