

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is entered into by and between you, a healthcare provider, as well as any and all subsidiaries, affiliates, or assigns (hereinafter referred to as the “Covered Entity”), and MSP Recovery, LLC, a Florida limited liability company with an office at 2701 South Le Jeune Road, 10th Floor, Coral Gables, Florida 33134, as well as any and all subsidiaries, affiliates, or assigns of the immediately foregoing entity (hereinafter referred to as “Business Associate”), collectively referred to as the “Parties”. This Agreement modifies any other prior existing contract for this purpose and is effective on the last date fully executed by the Parties below (the “Effective Date”).

This Business Associate Agreement is published on the MSP Recovery website, and in the MSP Recovery application. You acknowledge receipt of the Notice when you select the “I Agree” button after being presented these forms during the account creation/sign-up process in the MSP Recovery applications or MSP Recovery website, or by indicating or signing your acknowledgement in another written or digital format provided to you. You can receive a copy of the Notice by visiting our website and printing the form from there.

### **1. DEFINITIONS**

1.1 Breach – shall mean the acquisition, access, use, or disclosure of protected health information (“PHI”) in a manner not permitted by the Security and Privacy Rule that compromises the security or privacy of the PHI as defined, unless excepted by the provision set forth in 45 C.F.R. § 164.402.

1.2 Business Associate – shall generally have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to the parties to this Agreement shall mean MSP Recovery, LLC (hereinafter “MSP Recovery”), as well as any and all subsidiaries, affiliates, or assigns.

1.3 Covered Entity – shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103.

1.4 Designated Record Set – shall have the same meaning as the term “designated record set” at 45 C.F.R. § 164.501.

1.5 HIPAA – shall mean those provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

1.6 HIPAA Rules – shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

1.7 HITECH BA Provisions – shall mean those provisions of the Health Technology for Economic and Clinical Health (“HITECH”) Act, which was enacted as part of the American Reinvestment and Recovery Act of 2009, and the 2013 HIPAA Omnibus Rule, imposing requirements on Business Associate with respect to privacy, security, and breach notification, plus any regulations adopted by the Secretary of the Department of Health and Human Services (as defined herein and otherwise referred to as the “Secretary”) to implement the HITECH Act and Omnibus business associate provisions.

1.8 Individual – shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.9 Privacy Rule– shall have the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Subparts A and E of Part 164.

1.10 PHI – shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103 limited to the information created or received by Business Associate from or on behalf of the Covered Entity.

1.11 Required by Law – shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

1.12 Secretary – shall mean the Secretary of the Department of Health and Human Services (“HHS”) or his designee.

1.13 Security Rule – shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Subparts A and C of Part 164,

1.14 Subcontractor – shall have the same meaning as the term “subcontractor” in 45 C.F.R. § 160.103, more specifically, a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

All other capitalized terms not defined herein shall have the meanings assigned in the Privacy Rule, the Security Rule, and the HITECH Act.

## **2. OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

2.1 Business Associate agrees not to use or further disclose PHI, acquired from or accessed via the Covered Entity, other than as permitted or required by the Agreement or as Required by Law.

2.2 Business Associate agrees to comply with the standards, implementation specifications, and requirements of Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information of the Covered Entity.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect, which is known to Business Associate, resulting from a use or disclosure of PHI discovered by Business Associate, as defined in 45 C.F.R. § 164.410(a)(2), that is not permitted or required by this Agreement or as Required by Law.

2.4 Business Associate agrees to report to the Covered Entity, within the timeframe provided in 45 C.F.R. § 164.410(b), a Security Incident, as defined in 45 C.F.R. § 164.304, or other use or disclosure of PHI, including unsecured PHI, that is not permitted or required by this Agreement or as Required by Law of which Business Associate discovers, as defined at 45 C.F.R. § 164.410.

2.5 Business Associate agrees to ensure that any Subcontractor to whom Business Associate provides PHI, which it received from the Covered Entity, or received on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect

to such PHI, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2).

- 2.6 Business Associate agrees to provide, at the request of the Covered Entity, an Individual access to PHI about the Individual, as contained in a Designated Record Set, following the Individual's request for access to the Covered Entity, in compliance with the requirements under 45 C.F.R. § 164.524.
- 2.7 Business Associate agrees to make any amendment(s) to an Individual's PHI, as contained in a Designated Record Set, that the Individual or Covered Entity directs Business Associate to make, pursuant to 45 C.F.R. § 164.526 at the request of an Individual.
- 2.8 Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI – either received from the Covered Entity, created by the Covered Entity, or received on behalf of the Covered Entity – available to the Covered Entity, or at the request of the Covered Entity, to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Business Associate's compliance with the Privacy Rule.
- 2.9 Business Associate agrees to document all disclosure(s) of PHI to enable the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI about that Individual in compliance with 45 C.F.R. § 164.528.
- 2.10 Within thirty (30) days of receiving a request from the Covered Entity regarding Business Associate's documentation of disclosure(s) of PHI, Business Associate agrees to make available the information necessary for the Covered Entity to make an accounting of disclosures of PHI about an Individual.
- 2.11 The provisions of the HITECH Act that apply to Business Associate and are required to be incorporated by reference in a business associate agreement are hereby incorporated into this Agreement, including, without limitation, 42 U.S.C. §§ 17935(b), (c), (d), & (e), and 17936(a) & (b).
- 2.12 Without limitation of the foregoing:
  - 2.12.1 – Pursuant to 42 U.S.C. § 17931(a), the following sections of the Security Rule shall apply to Business Associate in the same manner as they apply to the Covered Entity:
    - 2.12.1.1 – Section 164.308 – Administrative safeguards;
    - 2.12.1.2 – Section 164.310 – Physical safeguards;
    - 2.12.1.3 – Section 164.312 – Technical safeguards; and
    - 2.12.1.4 – Section 164.316 – Policies and procedures and documentation requirements.
  - 2.12.2 – Pursuant to 42 U.S.C. § 17934(a), Business Associate may use or disclose PHI that it obtains or creates pursuant to this Agreement only if such use or disclosure is in compliance with each applicable requirement of Section 164.504(e).
  - 2.12.3 – Section 164.504(e)(1)(iii) of the Privacy Rule shall apply to Business Associate with respect to compliance with such subsection, in the same manner that such section applies to the

Covered Entity, with respect to compliance with standards in sections 164.502(e) and 164.504(e) of the Privacy Rule. To the extent necessary to achieve the purposes of the foregoing, Business Associate shall have the right to terminate this Agreement and all contracts to which it relates if the Covered Entity is in material breach or violation of this Agreement and fails to take reasonable steps to cure such a breach or violation.

2.12.4 – 42 U.S.C. §§ 17931(b) & 17934(c) each apply to Business Associate with respect to its status as a Business Associate to the extent set forth in each such section.

2.12.5 – Pursuant to 42 U.S.C. § 17932, without unreasonable delay, and in any event no later than sixty (60) calendar days after Business Associate’s discovery of a breach of unsecured PHI, Business Associate shall notify the Covered Entity of any breach of unsecured PHI as required under 42 U.S.C. § 17932. The notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all individuals whose unsecured PHI is reasonably believed by Business Associate to have been breached along with any other available information that is required to be included in the notification to the individual, HHS and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 & 164 subparts A, D, & E.

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

3.1 General Use and Disclosure Provision: Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, the Covered Entity for the purposes discussed in this section, provided such use or disclosure of PHI would not violate the HIPAA Rules, for the purpose of performing this Agreement.

#### **3.2 Specific Use and Disclosure Provisions:**

3.2.1 Except as otherwise limited in the Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.2.2 Except as otherwise limited in this Agreement, Business Associate may disclose PHI 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 PHI 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.

3.2.3 Except as otherwise limited to this Agreement, Business Associate may use PHI to provide data aggregation services to the Covered Entity permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

### **4. OBLIGATIONS OF THE COVERED ENTITY**

4.1 The Covered Entity shall 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 or disclosure of PHI.

4.2 The Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

4.3 The Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

4.4 Permissible Requests by the Covered Entity. The Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule.

## **5. TERM AND TERMINATION**

5.1 Term. The Term of this Agreement shall be effective as of the Effective Date as defined above, and shall terminate when all of the PHI provided by the Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section. Termination of this Agreement shall automatically terminate any other agreement between the Parties.

5.2 Termination for Cause. Upon the Covered Entity's knowledge of a material breach of this Agreement regarding the protection of PHI by Business Associate, the Covered Entity shall provide Business Associate an opportunity to make a reasonable effort to cure the material breach or end the violation, and the Covered Entity shall:

5.2.1 Terminate this Agreement if Business Associate does not make a reasonable effort to cure the breach or end the violation within thirty (30) days of the Covered Entity's notice to Business Associate of the material breach; or

5.2.2 Terminate this Agreement if Business Associate does not cure the material breach within sixty (60) days of the Covered Entity's notice to Business Associate of the material breach; or

5.2.3 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement regarding the protection of PHI and cure is not possible.

### **5.3 Effect of Termination**

5.3.1 Except as provided in the following paragraph, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from the Covered Entity, or created or received by Business Associate on behalf of the Covered Entity, in accordance with state and federal retention guidelines. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate, and its Subcontractors, if any, shall retain no copies of the PHI.

5.3.2 In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to the Covered Entity notification of the conditions

that make return or destruction infeasible. Upon mutual agreement of the Parties that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3.3 In the event the Covered Entity and Business Associate agree that Business Associate shall retain PHI after the termination of this Agreement, with respect to PHI received from the Covered Entity, or created, maintained, or received by Business Associate on behalf of the Covered Entity, Business Associate shall:

5.3.3.1 Retain only that PHI which is necessary for Business Associate to continue its proper management and administration and to carry out its legal responsibilities;

5.3.3.2 Return to the Covered Entity the remaining PHI that Business Associate still maintains in any form;

5.3.3.3 Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI, other than as provided for in this Section for as long as Business Associate retains the PHI;

5.3.3.4 Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained, subject to the same conditions which applied prior to termination; and

5.3.3.5 Return to the Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **6. MISCELLANEOUS**

6.1 **Regulatory References.** A reference in this agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

6.2 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Business Associate to comply with the requirements of HIPAA, the Privacy Rule and the Security Rule.

6.3 **Notice.** All notices and other communications required or permitted hereunder or convenient in connection herewith shall be in writing and shall be deemed to have been given when mailed via certified mail, return receipt requested, or sent via electronic delivery, addressed to the parties at the address set forth on the signature page, or to such other names and addresses as the Parties may designate by notice to the other party hereto in the manner specified in this Section.

6.4 **Survival.** The respective rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of this Agreement.

6.5 Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Business Associate to comply with the Privacy Rule.

6.6 Indemnification. Business Associate shall defend and indemnify the Covered Entity against, and hold the Covered Entity (including its affiliates, and their officers, directors, trustees, employees, and agents) harmless from, any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney's fees and disbursements, that may be incurred, imposed upon, or asserted against the Covered Entity by reason of any claim, regulatory proceeding, or litigation arising directly or indirectly from any act or omission of Business Associate or its officers, directors, employees, Subcontractors, agents, representatives, and/or other persons acting on its behalf, with respect to using or disclosing PHI, or maintaining the security, confidentiality, integrity, and availability of electronic PHI, in accordance with this Agreement or applicable state law.

6.7 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than the Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies, or liabilities.

6.8 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, and communications of whatever type, whether written or oral, between the Parties hereto with respect to the subject matter hereof, including any prior Agreement signed by the Parties to comply with HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations and/or the HITECH Standards, if any. Except to the extent specifically amended hereby, the provisions of the Agreement shall remain unmodified, and the Agreement as amended hereby is confirmed as being in full force and effect.