

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is effective as of today (the “Agreement Effective Date”) by and between Medical Informatix , Inc., a New York Corporation, with an address at 1225 Franklin Avenue, Suite 325, garden City, NY 11530 (“Business Associate”) and you and your medical practice, business or similar organization (collectively, the “Covered Entity”). (each a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), the HIPAA Security Regulations (as hereinafter defined) and the HIPAA Breach Notification Regulations (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in connection with the Services (as hereinafter defined) it will provide to the Covered Entity; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard the privacy, confidentiality, integrity and availability of Individually Identifiable Health Information;

NOW THEREFORE, the Parties agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.
 - a. “*Breach*” shall mean the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Rule”) which compromises the security or privacy of the PHI. “Breach” shall not include:
 - (1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
 - (2) Any inadvertent disclosure by a person who is authorized to access PHI at the Covered Entity or Business Associate to another person authorized to access PHI at the Covered Entity or Business Associate, respectively, or

Organized Health Care Arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or

- (3) A disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. “*Data Aggregation*” means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- c. “*Electronic Protected Health Information*” or “*Electronic PHI*” means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- d. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and as otherwise may be amended from time to time.
- e. “*HIPAA Breach Notification Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to require notification of breaches of unsecured PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart D, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.
- f. “*HIPAA Omnibus Rule*” means the recently promulgated final rule entitled, “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act Other Modifications to the HIPAA Rules.” Any standards or implementation specifications described herein that have been added or modified by the HIPAA Omnibus Rule shall have a compliance date of September 23, 2013.
- g. “*HIPAA Privacy Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.
- h. “*HIPAA Security Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the

security of Electronic PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.

- i. “*Individually Identifiable Health Information*” means information that is a subset of health information, including demographic information collected from an individual, that is;
 - (1) created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - (2) 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
 - (a) that identifies the individual; or
 - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- j. “*Protected Health Information*” or “*PHI*” means Individually Identifiable Health Information transmitted or maintained in any form or medium, including electronically, that (i) is received by Business Associate from Covered Entity, (ii) is created by Business Associate for its own purposes from Individually Identifiable Health Information that Business Associate receives from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. PHI excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.
- k. “*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.
- l. “*Services*” means the services defined under the services arrangement (the “*Services Agreement*”) between the Parties.
- m. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations and shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.

2. Obligations and Activities of Business Associate

- a. *Use or Disclosure.* Business Associate agrees to not use or further disclose PHI other than as expressly permitted or required by this Agreement or as required by law.
- b. *Safeguards and Compliance with the HIPAA Security Regulations.* Business Associate agrees to use appropriate safeguards to appropriately protect the confidentiality, integrity, and availability of PHI and prevent unauthorized use or disclosure of the information. Notwithstanding the generality of the foregoing, Business Associate agrees to comply with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Requirements), and 164.316 (Policies and Procedures and Documentation Requirements) with respect to Electronic PHI.
- c. *Mitigation.* 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 Agreement.
- d. *Reporting.* Business Associate agrees to report to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or by a third party to which Business Associate disclosed PHI pursuant to Section 2.e (“Subcontractors and Agents”) as soon as practicable, but in no event later than within sixty (60) days of becoming aware of any such disclosure. Business Associate further agrees to report to Covered Entity any Security Incident of which Business Associate becomes aware.

Notwithstanding the foregoing provisions of this Section 2.d., Business Associate shall promptly report to Covered Entity any Breach consistent with the Breach Notification Regulations. Business Associate agrees to fully cooperate, coordinate with and assist Covered Entity in gathering the information necessary to notify the affected individuals.

- e. *Subcontractors and Agents.* In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.
- f. *Requests for Restrictions.* Business Associate agrees to comply with requests for restrictions on use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of such PHI.
- g. *Access to PHI.* Upon request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make

available to Covered Entity, in the time and manner reasonably designated by Covered Entity, such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity in the time and manner reasonably designated by Covered Entity such that Covered Entity can respond to such individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

- h. *Amendment of PHI.* Upon receipt of a written request by or on behalf of Covered Entity for the amendment of an individual's PHI or record contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment, in the time and manner reasonably designated by Covered Entity and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.
- i. *Audit and Inspection.* Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI and the security of Electronic PHI, available to Covered Entity, or, at the request of Covered Entity, to the Secretary of Health and Human Services (the "Secretary of HHS") or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary of HHS determining Covered Entity's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.
- j. *Documentation of Disclosures.* Business Associate agrees to document such disclosures of PHI, and such information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and as otherwise may be amended from time to time.
- k. *Accounting of Disclosures of PHI.* Upon receipt of notice by or on behalf of Covered Entity that Covered Entity has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, that information collected in accordance with Section 2.j ("Documentation of Disclosures") of this Agreement, including disclosures of PHI held by Business Associate for treatment, payment, or health care operations purposes contained within an Electronic Health Record maintained by Business Associate on behalf of Covered Entity pursuant to this Agreement, to permit Covered Entity to respond to the request in accordance with 45 C.F.R. § 164.528, and as otherwise may be amended from time to time.

- l. *Prohibition on Sale of PHI.* Business Associate agrees to comply with the prohibition of sale of PHI without authorization unless an exception under 45 C.F.R. § 164.508 applies.
- m. *Minimum Necessary Use and Disclosure.* In conducting functions and/or activities under this Agreement that involve the use and/or disclosure of PHI, Business Associate shall limit the use and/or disclosure of PHI to the minimum amount of information necessary as determined by Covered Entity to accomplish the intended purpose of the use or disclosure, as required by 45 C.F.R. 164.502(b).
- n. *Electronic Transactions Regulations.* If Business Associate conducts any Transaction for or on behalf of Covered Entity which is covered under the Electronic Transactions Standards from and after the Agreement Effective Date, Business Associate agrees that it will comply with, and cause its employees, agents and representatives, and subcontractors to comply with, the applicable requirements of the Electronic Transactions Standards.

3. Permitted Uses and Disclosures by Business Associate

- a. *General Use and Disclosure Provisions.* Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI in connection with its performance of the Services if such use or disclosure of PHI would not violate the HIPAA Privacy Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b (“Specific Use and Disclosure Provisions”) of this Agreement.
- b. *Specific Use and Disclosure Provisions.*
 - (1) Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such PHI may only be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:
 - (a) the information will remain confidential.
 - (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
 - (c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (2) Business Associate may use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. Obligations of Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations if done by Covered Entity or that is not otherwise expressly permitted under Section 3 (“Permitted Uses and Disclosures by Business Associate”) of this Agreement.

5. Term and Termination

- a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall continue until terminated in accordance with the provisions of Section 5.b (“Termination for Cause”) or 6.b (“Amendment”) hereof, or until the Services Agreement terminates.
- b. *Termination for Cause.* Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with notice of and an opportunity to cure such breach and then terminate this Agreement if Business Associate does not cure the breach within time period specified by Covered Entity, or (2) terminate this Agreement immediately. In the event that termination of the Agreement is not feasible, Business Associate acknowledges and agrees that Covered Entity has the right to report the breach to the Secretary of HHS.

Upon Business Associate’s knowledge of a material breach by the Covered Entity of this Agreement, Business Associate may, in its sole discretion, provide Covered Entity with notice of and an opportunity to cure such breach and then terminate this Agreement if Covered Entity does not cure the breach within time specified by Business Associate. If termination of the Agreement is not feasible, Covered Entity acknowledges and agrees that Business Associate has the right to report the breach to the Secretary of HHS.

- c. *Effect of Termination.*
 - (1) 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. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the

Parties that return, or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous

- a. *Regulatory References.* A reference in this Agreement to a section in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HIPAA Breach Notification Regulations means the section as in effect or as amended from time to time, and for which compliance is required, except that any standards or implementation specifications described herein that have been added or modified by the HIPAA Omnibus Rule.
- b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI, including, but not limited to, changes under the HIPAA Privacy Regulations, the HIPAA Security Regulations and the HIPAA Breach Notification Regulations.
- c. *Survival.* The respective rights and obligations of Business Associate under Section 5.c (“Effect of Termination”) shall survive the termination of this Agreement.
- d. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations or the HIPAA Breach Notification Regulations.
- e. *State Law.* Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
- f. *Insurance and Indemnification.* Business Associate shall indemnify the Covered Entity for damages incurred resulting from the Business Associate’s negligent, reckless, or intentionally wrongful acts in violation of this Agreement; provided, however, that Business Associate’s liability for indemnification to Covered Entity shall be limited to the limitation of liability associated with the Services Agreement, for all claims.
- g. *No Third-Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity,

Business Associate, and their respective successors and assigns, any rights, obligations, remedies, or liabilities.

- h. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.
- i. *Independent Contractors.* No provision of this Agreement is intended to create, nor shall be deemed or construed to create any employment, agency or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. None of the parties nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other. The parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either Covered Entity or Business Associate that Business Associate constitute an “agent” under such common law.
- j. *Entire Agreement.* This Agreement constitutes the entire agreement between Covered Entity and Business Associate pertaining to the subject matter hereof and supersedes any previous agreements between Covered Entity and Business Associate relating to the same subject matter. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of Covered Entity and Business Associate. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- k. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without application of principles of conflicts of laws.
- l. *Headings.* The headings contained in this Agreement are included for purposes of convenience only and shall not affect in any way the meaning or interpretation of any of the terms of this Agreement.
- m. *Notices.* Any notices to be given under this Agreement to a Party shall be made via U.S. Mail or express courier to such Party’s address set forth in the Trial & Subscription Agreement.

Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above in this Section.

- n. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. You are electronically agreeing to this, hereof your signature shall be deemed to be originals.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Agreement Effective Date.