

TERMS AND CONDITIONS FOR DATA PRIVACY PROTECTION AGREEMENTS

1. DEFINITIONS

1.1. **Defined Terms.** For purposes of these Terms, the following terms will have the following meanings:

- (a) **“Agreement”** means an agreement between the Parties in connection with which NPI may be disclosed by one Party to the other Party, or created or received by one Party on the other Party’s behalf, in the course of performing services under the agreement.
- (b) **“Business Associate”** means a Party who creates, receives, or processes NPI in the course of performing services for the other Party under an Agreement or who satisfies the definition of a “business associate” or “processor” under applicable Rules when performing services for the other Party under an Agreement. For the avoidance of doubt, either Party may be a Business Associate under these Terms from time to time depending on the circumstances.
- (c) **“Covered Entity”** means a Party who discloses NPI to the other Party in the course of receiving services from the other Party under an Agreement or who satisfies the definition of a “covered entity” or “controller” under applicable Rules. For the avoidance of doubt, either Party may be a Covered Entity under these Terms from time to time depending on the circumstances.
- (d) **“GLBA”** means Title V of the Gramm-Leach-Bliley Act and the regulations implemented thereunder.
- (e) **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, the applicable provisions of the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009, and the regulations implemented thereunder, including the **“Security Rule,”** the **“Breach Notification Rule,”** and the **“Privacy Rule,”** as codified in Subparts C, D, and E, respectively, of 45 C.F.R. Part 164.
- (f) **“NPI”** means PHI, “nonpublic personal information” as defined in the GLBA, and any information which is protected by applicable Rule and which, in each case, is disclosed by Covered Entity to Business Associate, or created or received by Business Associate on Covered Entity’s behalf, in the course of performing services for Covered Entity under an Agreement.
- (g) **“Parties”** means, with respect to an Agreement, each of the persons who are parties to the Agreement collectively.
- (h) **“Party”** means, with respect to an Agreement, a person who is a party to the Agreement.
- (i) **“PHI”** means “protected health information” as defined in 45 C.F.R. § 160.103.
- (j) **“Required by Law”** means a legal mandate that compels an entity to make a use or disclosure of NPI that is enforceable in a court of law and includes the matters set forth in 45 C.F.R. § 164.103.
- (k) **“Rules”** means any applicable federal, state, or local law, rule, or regulation concerning the protection of nonpublic personal information or sensitive data about individuals, including the GLBA and HIPAA, to the extent applicable.
- (l) **“Terms”** or **“Terms and Conditions”** means these Terms and Conditions for Data Privacy Protection Agreements.

1.2. **Other Terms.** For purposes of these Terms, defined terms under HIPAA which are used in these Terms but not otherwise defined in these Terms will have the meanings given to them under HIPAA.

2. PERMITTED USES AND DISCLOSURES OF NPI

- 2.1. **Performance of an Agreement.** Except as limited by these Terms or an Agreement, Business Associate may use and disclose NPI to perform services for or on behalf of Covered Entity as specified in an Agreement provided that such use or disclosure would not violate the Rules if done by Covered Entity.
- 2.2. **Administrative Use.** Except as limited by these Terms or an Agreement, Business Associate may use NPI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 2.3. **Administrative Disclosure.** Except as limited by these Terms or an Agreement, Business Associate may disclose NPI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if (a) disclosure is Required by Law or (b) Business Associate obtains reasonable assurances from the person to whom NPI is disclosed that (i) the NPI will be held confidentially and only used or further disclosed as Required by Law or for the purposes for which it was disclosed to the person and (ii) the person will notify Business Associate if the confidentiality of the NPI is breached.
- 2.4. **Data Aggregation.** Except as limited by these Terms or an Agreement, Business Associate may use and disclose NPI to provide data aggregation services relating to the health care operations of Covered Entity.
- 2.5. **Reporting Violations of Law.** Business Associate may use and disclose NPI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- 2.6. **De-Identification.** Business Associate may de-identify NPI. The requirements of these Terms will not apply to information that has been de-identified in accordance with the applicable requirements of 45 C.F.R. § 164.514, provided that the requirements of these Terms will apply to de-identified information that is re-identified, and disclosure of a code or other means of identification that is designed to enable de-identified information to be re-identified will constitute disclosure of NPI for purposes of these Terms.

3. RESPONSIBILITIES OF BUSINESS ASSOCIATE

- 3.1. **General Rule.** Business Associate will not use or disclose NPI other than as permitted by these Terms or as Required by Law.
- 3.2. **Safeguards.** Business Associate will use reasonable and appropriate safeguards to prevent the impermissible use or disclosure of NPI. In furtherance thereof, Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic NPI, and otherwise comply, where applicable, with the provisions of the Security Rule with respect to electronic PHI.
- 3.3. **Reporting Impermissible Uses or Disclosures.** Business Associate will report impermissible uses and disclosures of NPI of which it becomes aware to Covered Entity without unreasonable delay and in compliance with the Rules. Without limiting the foregoing, Business Associate will report “security incidents” as required by 45 C.F.R. § 164.314 and “breaches” of “unsecured protected health information” as required by 45 C.F.R. § 164.410. Reportable security incidents will not include trivial incidents that occur on a routine basis, such as scans, pings, or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate. Except when due to law enforcement delay as provided in 45 C.F.R. § 164.412, Business Associate will endeavor to report breaches of unsecured protected health information within 10 days after discovery of a breach, but in all cases within the timeframes required by applicable Rules. The content of notices required by this Section will comply with the Rules, including 45 C.F.R. § 164.410 as applicable.

- 3.4. **Subcontractors.** Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit NPI on behalf of Business Associate agree to the same or substantially similar restrictions and conditions that apply to Business Associate with respect to such information.
- 3.5. **Access to Protected Health Information.** If Business Associate maintains PHI for Covered Entity in a designated record set, Business Associate will provide Covered Entity access to such PHI within 14 days of request from Covered Entity to permit Covered Entity to meet its obligations under 45 C.F.R. § 164.524.
- 3.6. **Amendments to Protected Health Information.** If Business Associate maintains PHI for Covered Entity in a designated record set, Business Associate will make such PHI available to Covered Entity within 14 days of request from Covered Entity to permit Covered Entity to meet its obligations under 45 C.F.R. § 164.526, and Business Associate will incorporate any amendments made by Covered Entity to such PHI.
- 3.7. **Accounting of Disclosures.** Business Associate will document disclosures of PHI made by Business Associate to the extent necessary to permit Covered Entity to respond to a request for an accounting of disclosures under 45 C.F.R. § 164.528, and Business Associate will make such information available to Covered Entity within 14 days of request from Covered Entity to permit Covered Entity to meet its obligations under 45 C.F.R. § 164.528.
- 3.8. **Minimum Necessary.** When using or disclosing PHI or when requesting PHI from Covered Entity or a subcontractor, Business Associate will make reasonable efforts to limit the PHI that is used, disclosed, or requested to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request, subject to the exceptions set forth in 45 C.F.R. § 164.502(b)(2).
- 3.9. **Requested Restrictions.** Business Associate will notify Covered Entity of requests for restrictions that Business Associate receives under 45 C.F.R. § 164.522 or similar Rules from individuals who are customers or employees of Covered Entity.
- 3.10. **Access to Secretary.** Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Rule.

4. RESPONSIBILITIES OF COVERED ENTITY

- 4.1. **Required Permissions.** To the extent any consent, authorization, or permission is required to disclose NPI to Business Associate, Covered Entity will obtain such consent, authorization, or permission.
- 4.2. **Notification of Limitations.** Covered Entity will notify Business Associate of any limitation or restriction of which it is aware on the use or disclosure of NPI that might affect Business Associate's use or disclosure of NPI, including the following.
 - (a) Covered Entity will notify Business Associate of any limitation or restriction on the use or disclosure of PHI in Covered Entity's notice of privacy practices under 45 C.F.R. § 164.520 to the extent that such limitation might affect Business Associate's use or disclosure of PHI.
 - (b) Covered Entity will notify Business Associate of any changes in, or revocation of, any permission by an individual to use or disclose NPI, to the extent that such change might affect Business Associate's use or disclosure of NPI.
 - (c) Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to under 45 C.F.R. § 164.522, to the extent that such restriction might affect Business Associate's use or disclosure of PHI.

- 4.3. **Minimum Necessary.** When requesting PHI from Business Associate, Covered Entity will make reasonable efforts to limit the PHI requested to the minimum amount necessary to accomplish the intended purpose of the request, subject to the exceptions set forth in 45 C.F.R. § 164.502(b)(2).
- 4.4. **Prohibited Actions.** Covered Entity will not request that Business Associate use or disclose NPI in any manner that would not be permissible under the Rules if done by Covered Entity.

5. TERMINATION

- 5.1. **Expiration or Termination of Other Agreements.** These Terms may be terminated by either Party upon notice to the other Party following the expiration or termination of all applicable Agreements.
- 5.2. **Material Breach.** These Terms may be terminated by either Party if the other Party breaches a material provision of these Terms and such breach is not cured within 30 days from the date of notice of such breach, unless such breach is not capable of being cured within said amount of time, in which case these Terms may be terminated by the non-breaching Party immediately upon notice to the other Party.
- 5.3. **Return or Destruction of NPI.** Upon the request of the Covered Entity following the expiration or termination of these Terms, the Business Associate will promptly return or destroy (at the Business Associate's election) all of the NPI in the Business Associate's possession. Notwithstanding the foregoing, the Business Associate will not be required to return or destroy NPI that (a) is stored on back-up media in the ordinary course of business that is not practical to delete so long as reasonable precautions are taken by the Business Associate to prevent access to such data, or (b) is required by Law to be retained; provided, however, that these Terms will continue to apply to NPI which is not returned or destroyed for either of the foregoing reasons. If requested by the Covered Entity, the Business Associate will confirm in writing that it has complied with its obligations under this Section.

6. COMPLIANCE WITH LAW

- 6.1. **General.** Each Party is responsible for and represents and warrants to the other Party that it will comply with the Rules in connection with these Terms.
- 6.2. **Agreement to Amend.** The Parties agree to take such action from time to time as is necessary to amend these Terms to permit each Party to comply with the Rules. The Parties agree to negotiate such amendments in good faith. If the Parties cannot agree on the terms of any such amendment, either Party may terminate these Terms upon notice to the other Party.
- 6.3. **Construe in Favor of Compliance.** The Parties agree that any ambiguity in these Terms should be resolved in a manner that permits compliance with the Rules.

7. DISPUTE RESOLUTION

- 7.1. **Notice and Consultation.** Each Party agrees it is in its best interest to attempt to resolve disputes amicably to the extent possible. Accordingly, except with respect to (a) matters involving bankruptcy, (b) instances in which a Party is seeking injunctive relief, or (c) instances in which a Party is seeking payment for amounts due under these Terms, before commencing arbitration or any other proceeding against the other Party in connection with these Terms, a Party must first send notice to the other Party and describe its claims in reasonable detail and afford the other Party at least 10 days to attempt to resolve any claims through good faith negotiation and consultation.
- 7.2. **Arbitration.** Except with respect to (a) matters involving bankruptcy, (b) instances in which a Party is seeking injunctive relief, or (c) instances in which a Party is seeking payment for amounts due under these Terms, any claim or dispute between the Parties relating to these Terms, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which it is based, which is not settled through negotiation

and consultation as provided above, will be submitted to binding arbitration before one arbitrator. The arbitration will take place in Lenexa, Kansas. The arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association and in accordance with the substantive law that would be applied in any court of law based on the governing law provision in these Terms. The arbitrator may not, and the Parties will direct the arbitrator not to, (a) award any damages which are excluded by these Terms or in excess of limitations provided in these Terms, or (b) ignore or vary the terms of these Terms. The arbitrator will, and the Parties will direct the arbitrator to, follow applicable principles of law as if in a court of law and issue a reasoned opinion. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction thereof. All arbitration fees will be split equally by the Parties. Any such arbitration award will be final and binding upon the Parties.

- 7.3. **Exclusions and Limitations.** Except with respect to indemnifiable third-party claims under an Agreement, neither Party will be liable to the other Party under any circumstances for any indirect, incidental, consequential, special, exemplary, lost profits, or punitive damages of any kind or nature, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which a claim is based. Any other applicable limitations of liability under an Agreement will apply to claims made in connection with these Terms.

8. CHOICE OF LAW AND FORUM

- 8.1. **Governing Law.** These Terms and all claims relating thereto, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which they are based, will be governed by the laws of the State of Kansas without regard to conflict of laws principles that would require the application of any other law.
- 8.2. **Jurisdiction.** Without limiting the arbitration agreement set forth above, each Party submits to the jurisdiction of the courts of Johnson County, Kansas and the United States District Court for the District of Kansas in any proceeding related to these Terms that is not arbitrated, and any claims that cannot be arbitrated, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which they are based, may only be brought in such courts.
- 8.3. **Waiver of Jury Trial.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING RELATING TO THESE TERMS, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH IT IS BASED.

9. MISCELLANEOUS

- 9.1. **Interpretations.** The term "writing" and any derivation thereof includes email. References to prices, values, or monetary amounts refer to United States dollars. Headings are for convenience of reference only and may not be used for interpretation. References to contracts, including these Terms, and provisions of law mean such contracts and provisions of law as amended, supplemented, or modified. The term "including" has the inclusive meaning frequently identified with the phrase "including, but not limited to" or "including, without limitation." Unless the context otherwise clearly indicates, defined terms will have comparable meanings when used in their plural or singular forms.
- 9.2. **Notices.** Notices under these Terms must be in writing. Notice to a Party will be deemed effective when delivered to the notice email address or mailing address for such Party on the signature page to this DPPA or the applicable Agreement, or such other email address or mailing address that a Party may prescribe by providing a notice that complies with this section to the other Party. Notices sent by mail must be sent by either certified mail, costs prepaid, or by a nationally recognized carrier, costs prepaid, that provides a record of delivery.
- 9.3. **Computing Time Periods.** Unless provided otherwise by the Rules, when computing time periods under these Terms, the first day of the period will not be counted, and every other day, including Saturdays, Sundays, and Holidays, will be counted. If the last day of the period is a Saturday, Sunday, or Holiday, the

period will continue to run until the next day that is not a Saturday, Sunday, or Holiday. The term “**Holiday**” means a day on which the Federal Reserve Bank for the District of Kansas is closed. All references to time of day will be to United States Central Standard Time.

- 9.4. **Entire Agreement.** These Terms set forth the Parties complete and exclusive agreement regarding the subject matter hereof and supersede all prior or contemporaneous agreements regarding the same. These Terms may only be modified or amended in a writing executed by each Party. No failure, delay, or single or partial exercise of any right, power, or privilege by a Party will operate as a waiver of any right, power, or privilege of such Party. All remedies under these Terms are cumulative unless stated otherwise in these Terms.
- 9.5. **No Third-Party Beneficiaries.** The Parties do not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
- 9.6. **Severability.** If any provision of these Terms is held invalid or unenforceable, the other provisions of these Terms will remain in full force and effect. Any provision of these Terms held invalid or unenforceable in part will remain in full force and effect to the extent not held invalid or unenforceable.
- 9.7. **Survival.** Provisions of these Terms which expressly or by their nature are intended to survive the expiration or termination of these Terms will continue in full force and effect following the expiration or termination of these Terms, subject to any limitations stated in these Terms.
- 9.8. **Opportunity for Counsel.** Each Party acknowledges it has had an opportunity to consult with an attorney of its choosing before entering into these Terms. Each Party agrees that no rule of construction should be applied to construe any term of these Terms more strictly against any one Party. Except to the extent stated differently in these Terms, each Party will be responsible for its own attorneys’ fees in connection with these Terms and any dispute arising out of or relating to these Terms.

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