

PROTECTED HEALTH INFORMATION

1. DEFINITIONS. Unless otherwise defined herein, all terms used herein shall have the meanings ascribed to them in the body of the Agreement.

1.1 Business Associate shall mean _____.

1.2 Designated Record Set shall have the meaning defined in 45 CFR §164.501, as currently drafted and subsequently amended.

1.3 Health Care Operations shall have the meaning defined in 45 CFR §164.501, as currently drafted and subsequently amended.

1.4 Protected Health Information (“PHI”) shall have the meaning defined in 45 C.F.R. §164.501, as currently drafted or subsequently amended.

2. PERMISSIVE USES OF PHI BY Business Associate

2.1 Services. Except as otherwise specified herein, Business Associate may make only those uses of PHI necessary to perform its obligations under the Agreement. All other unauthorized uses are prohibited, unless agreed to in writing by Optima.

2.2 Activities. Unless otherwise limited herein, Business Associate may:

- a. use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- b. disclose the PHI in its possession to third parties for the purpose of its proper management and administration related to this Agreement or to fulfill any present or future legal responsibilities of Business Associate, provided that Business Associate represents to Optima, in writing, that (i) the disclosures are required by law, or (ii) Business Associate has received from the third party written assurances regarding its confidential handling of such PHI.
- c. aggregate the PHI in its possession with the PHI of other covered entities that Business Associate has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide Optima with data analyses relating to the Health Care Operations of Optima.
- d. de-identify any and all PHI according to the requirements of 45 C.F.R. §164.514(b).

3. RESPONSIBILITIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate hereby agrees to:

- a. use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise required by law.

- b. report to Optima, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which it becomes aware within 15 days of Business Associate's discovery of such unauthorized use and/or disclosure.
- c. establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI that Business Associate reports to Optima.
- d. use reasonable efforts to maintain the security of the PHI and to prevent its unauthorized use and/or disclosure.
- e. require all of its subcontractors and agents that receive, use or have access to PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate.
- f. make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary of Health and Human Services (the "Secretary") for purposes of determining Optima's compliance with the HIPAA Privacy and Security Regulations, subject to applicable legal privileges.
- g. upon prior written request, make available to Optima during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to Business Associate's use and/or disclosure of PHI within 7 days for purposes of enabling Optima to determine Business Associate's compliance with the terms of this Attachment.
- h. within 30 days of receiving a written request from Optima, provide to Optima such information as is requested by Optima to permit Optima to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. §164.528.
- i. disclose to its subcontractors, agents or other third parties, and request from Optima, only the minimum PHI necessary to perform or fulfill a specific function required or permitted under the Agreement.
- j. at the request of and in the time and manner chosen by Optima and in accordance with 45 C.F.R. §164.524, provide access to the PHI to Optima or the individual to whom such PHI relates or his/her authorized representative in order to meet a request by such individual.
- k. make any amendment(s) to the PHI kept in a Designated Record Set that Optima directs pursuant to 45 C.F.R. §164.526.
- l. implement 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 Optima.
- m. ensure that any agent, including a subcontractor, to whom it provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect the PHI.
- n. report to Optima any security incident of which it becomes aware.

4. TERMINATION

4.1 Termination by Optima. Optima may immediately terminate the Agreement and any related agreements/ attachments if Optima makes the determination that Business Associate has breached a material term of this Attachment. Alternatively, Optima may choose to: (i) provide Business Associate with 10 days written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within 7 days, Business Associate must cure said breach to the satisfaction of Optima within 30 days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement. In the event that termination of the Agreement is not feasible, Optima shall report the breach to the Secretary.

4.2 Effect of Termination. Upon termination of the Agreement, Business Associate agrees to return or destroy all PHI and retain no copies thereof, if it is feasible to do so, within 60 days of the termination of the Agreement. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify Optima in writing that it has determined that it is infeasible to return or destroy the PHI and the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Attachment to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Optima and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Attachment to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5. MISCELLANEOUS

5.1 Survival. Sections 4.2, and Section 2.1 solely with respect to Protected Health Information Business Associate retains in accordance with Section 4.2 because it is not feasible to return or destroy such Protected Health Information, shall survive termination of this Agreement.

5.2 Superceding Effect. Should the requirements of this Attachment conflict with the requirements contained in the body of the Agreement, the requirements providing for more stringent protections of PHI shall apply.

5.3 Effective Date. The effective date of this Attachment, exclusive of paragraphs 3.1(l), 3.1(m), and 3.1(n), shall be the Effective Date of the Agreement. The effective date of paragraphs 3.1(l), 3.1(m), and 3.1(n) shall be April 21, 2005 or the date of the Agreement, whichever shall occur later.

Authorized Agent: _____
(Signature)

Authorized by _____
(Signature)

Print Name: _____

Print Name: _____

Dated: _____

Dated: _____