

FIRST AMENDMENT TO BUSINESS ASSOCIATE AGREEMENT

This amendment is made to the existing HIPAA business associate terms and conditions agreed to by and between *[NAME OF BUSINESS ASSOCIATE]*, hereinafter called “Business Associate” and the University of Pittsburgh Medical Center, hereinafter called the Covered Entity (the “T&Cs”). Business Associate and Covered Entity shall be referred to herein individually as a “Party” or collectively as the “Parties.”

This amendment is a result of the 2009 American Recovery and Reinvestment Act, commonly referred to as the Stimulus Bill (Pub.L. 111-5).

Terms used herein, but not otherwise defined, shall have the same meaning as those terms in 45 CFR Section 160.103, 45 CFR Section 164.304, 45 CFR Section 164.501 and Pub.L. 111-5 Section 13400, as well as defined in Pub.L. 104-191 and Pub.L. 111-5.

The Parties agree to amend the T&Cs as follows:

Addition of the following provisions:

1. Business Associate shall report to Covered Entity any breach of Unsecured protected health information (PHI) that it becomes aware of as required by Pub.L. 111-5 Section 13402(b). The report shall include the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such breach. Such reports shall be submitted within two (2) business days of when Business Associate becomes aware of such breach and shall contain such information as Business Associate reasonably believes is required for Covered Entity to further investigate. Business Associate shall also provide such assistance and further information as reasonably requested by Covered Entity.
2. As required by Pub.L. 111-5 Section 13401(a), the following sections of title 45 of the Code of Federal Regulations (“HIPAA Security Standards”) shall also apply to Business Associate in its capacity as a business associate:
 - 45 CFR 164.308 (Administrative Safeguards)
 - 45 CFR 164.310 (Physical Safeguards)
 - 45 CFR 164.312 (Technical Safeguards)
 - 45 CFR 164.316 (Policies and Procedures and Documentation Requirements)

These provisions can be found at

<http://www.cms.hhs.gov/SecurityStandard/Downloads/securityfinalrule.pdf>. If Business Associate violates any of these provisions, the penalties as set forth in Section 1176 (General Penalty for Failure to Comply With Requirements & Standards) and Section 1177 (Wrongful Disclosure of Individually Identifiable Health Information) of the Social Security Act shall apply to Business Associate. This information can be located at:

http://www.ssa.gov/OP_Home/ssact/title11/1176.htm and
http://www.ssa.gov/OP_Home/ssact/title11/1177.htm.

3. As required in Pub.L. 111-5 Section 13404, if Business Associate knows of a pattern of activity or practice that constitutes a material breach or violation of Business Associates obligations under these terms, Business Associate must take reasonable steps to cure the breach or end the violation, as applicable. If Business Associate is unable to cure the breach or end the violation, Business Associate shall inform Covered Entity, and Covered Entity shall either:
 - (A) Terminate the contract or arrangement, if feasible; or
 - (B) If termination is not feasible, report the problem to the Secretary.

If Business Associate violates this provision, the penalties as set forth in Section 1176 (General Penalty for Failure to Comply With Requirements & Standards) and Section 1177 (Wrongful Disclosure of Individually Identifiable Health Information) of the Social Security Act shall apply to Business Associate. These provisions can be found at http://www.ssa.gov/OP_Home/ssact/title11/1176.htm and http://www.ssa.gov/OP_Home/ssact/title11/1177.htm.

4. As required by Pub.L. 111-5 Section 13405(d)(1), and unless approved by Covered Entity, consistent with the exceptions set forth in Pub.L. 111-5 Section 13405(d)(2), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual unless Covered Entity has obtained from the individual a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual.
5. As defined in Pub.L. 111-5 Section 13406(a) and 45 CFR 164.508, and unless approved by Covered Entity, Business Associate shall not directly or indirectly perform marketing to Covered Entity patients using PHI that was either provided by Covered Entity, or created or otherwise acquired by Business Associate on behalf of Covered Entity.
6. As provided for in Pub.L. 111-5 Section 13411, Business Associate shall be subject to audits by the Secretary to ensure they comply with Subtitle D (Privacy) of Pub.L. 111-5 as well as 45 CFR 164 subparts C and E.

Amendment of the following provision to read as follows:

1. Accounting of PHI. Business Associate agrees to document such disclosures of PHI and 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 CFR Section 164.528 and in Pub.L. 111-5 Section 13405(c). Business Associate further agrees to provide to Covered Entity or an Individual, as applicable, in a time and manner as prescribed by the Privacy Rule and Pub.L. 111-5, such information collected in accordance with this paragraph in

response to a request for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528 or Pub.L. 111-5. Such time and manner shall comply with the obligations under the Privacy Rule or Pub.L. 111-5.

All other terms and conditions that are not hereby amended by these T&Cs remain in full force and effect.