

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is between “Customer”, a health care provider, its employees and agents and Halo Communications (“Business Associate”).

WHEREAS, Customer is a “Covered Entity” that has registered to use Business Associate’s Communication System Services (“Services”) and, in connection with the Services, Covered Entity discloses to Business Associate certain protected health information (“PHI” as defined below) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and the regulations promulgated thereunder by the U.S. Department of Health and Human Services, including but not limited to, Title 45 Parts 160, 162, and 164 of the Code of Federal Regulations, as the same may be amended from time to time (“HIPAA Regulations”), as well as the data privacy and security provisions contained in the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (“ARRA”).

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in compliance with the HIPAA Regulations and HITECH Act.

NOW, THEREFORE, intending to be legally bound, Covered Entity and Business Associate hereby agree as follows:

A. Definitions. For purposes of this Agreement, the following terms shall have the meanings as indicated below which are intended to be consistent with the definitions of such terms as they are defined in the HIPAA Regulations. Terms used, but not otherwise defined in this Agreement, shall have the same meanings as those terms defined in the HIPAA Regulations.

1. “Individual” shall have the same meaning as the term “individual” in the HIPAA Regulations and shall include a person who qualifies as a personal representative in accordance with the HIPAA Regulations.

2. “Privacy Rule” shall mean the HIPAA Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.

3. “Protected Health Information” or “PHI” shall have the same meaning as the term is defined in the HIPAA Regulations, and shall include Electronic Protected Health Information (“EPHI”) (as defined in the HIPAA Regulations) but shall be limited to information created or received by Business Associate from or on behalf of Covered Entity.

4. “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information, 45 CFR Part 160 and Part 164, Subpart C.

B. Business Associate Obligations. Business Associate covenants and agrees that it shall:

1. Not use or disclose PHI other than as permitted or required pursuant to its obligations in providing the Services, this Agreement or as Required by Law.

2. Use appropriate and commercially reasonable efforts to safeguard and maintain the security and privacy of PHI.

3. Mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate to arise out of a use or disclosure of PHI by Business Associate in violation of the HIPAA Regulations or in violation of the requirements of this Agreement.

4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), require any Subcontractor of Business Associate that create, receive, maintains or transmits PHI on behalf of Business Associate, to agree in writing to adhere to the same restrictions, conditions and requirements that apply to Business Associate under this Agreement.

5. In the event Business Associate maintains PHI in a Designated Record Set, Business Associate shall provide Covered Entity access to such PHI to allow Covered Entity to comply with the requirements under 45 C.F.R. §164.524.

6. In the event Business Associate maintains PHI in a Designated Record Set, Business Associate shall provide Covered Entity access to such PHI to allow Covered Entity to comply with the requirements under 45 C.F.R. §164.526. At Covered Entity's request, Business Associate shall make any amendment(s) or corrections to the Designated Record Set.

7. Upon prior request and during normal business hours, make available to the Secretary or his/her designee, all internal policies and procedures and records relating to the use and/or disclosure of PHI by Business Associate and the PHI in Business Associate's possession for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Nothing contained in the foregoing shall be deemed to be a waiver of, or a requirement to waive, any attorney client privilege or other privilege that may be asserted with respect to any information contained in the records of Business Associate.

8. Provide to Covered Entity such information as is requested by Covered Entity to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of the Individual's PHI, including any disclosures by Business Associate, in accordance with 45 C.F.R. §164.528 and §17935(c) of the HITECH Act. Covered Entity and Business Associate acknowledge that it is Covered Entity's responsibility to respond to all such requests. Any request under 45 C.F.R. §164.528 and §17935(c) of the HITECH Act from an Individual made directly to Business Associate will be referred to Covered Entity.

9. Implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards to protect any EPHI in accordance with the standards of the Security Rule, including safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI received from, maintained or transmitted on behalf of Covered Entity as required by 45 C.F.R. §164.314(a)(2)(i)(A).

10. Comply with Subpart C of 45 CFR Part 164 with respect to EPHI.

11. Notify Covered Entity of any Breach, Security Incident, or Unauthorized Access, Use or Disclosure of PHI. Such notification shall be provided as soon as practicable, and in any event, no later than fifteen (15) business days after Business Associate becomes aware of the breach. Covered Entity and Business Associate acknowledge that it is the Covered Entity's responsibility to ensure that Individuals affected by the Breach are notified in accordance with the requirements of the HITECH Act. To the extent possible, Business Associate shall identify each Individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed as a result of the breach, and provide such information to Covered Entity as is necessary to meet the data breach notification requirements under the HITECH Act.

C. Permitted Uses and Disclosures. Business Associate agrees that it shall not use or disclose PHI in any manner, form, or in any means that is contrary to this Agreement. Consistent with the foregoing, the parties agree that Business Associate may:

1. Use or disclose PHI to assist Business Associate in investigating and responding to issues raised in connection with the provision of Services, provided that such use or disclosure would not violate the HIPAA Regulations if made by Covered Entity.

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

3. Except as otherwise limited in this Agreement, disclose PHI for the proper management and administration of Business Associate to the extent that disclosures are Required By Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

D. Covered Entity Obligations. Covered Entity covenants and agrees that it shall:

1. Promptly provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with the HIPAA Regulations, as well as any changes to that notice.

2. Provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that those changes affect Business Associate's permitted or required uses and disclosures; provided, however, that no such change or revocation shall be effective with respect to any uses or disclosures made by Business Associate prior to the time at which Business Associate is advised of such change or revocation.

3. Notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with the HIPAA Regulations, to the extent that such restriction may affect Business Associate's use or disclosure of PHI; provided, however, that no such restriction shall be effective with respect to any uses or disclosures made by Business Associate prior to the time at which Business Associate receives notice of such restriction.

E. For Cause Termination Provisions. In the event Covered Entity believes that Business Associate has materially breached this Agreement, the Covered Entity may:

1. Provide Business Associate with written notice of the existence of the alleged material breach and offer an opportunity to cure the alleged breach to Covered Entity's reasonable satisfaction within thirty (30) days of the original notice.

2. Immediately terminate this Agreement and the Services.

F. Obligations of Business Associate Upon Termination.

1. Upon termination of the Services, Business Associate agrees to return or destroy all PHI in its possession or in the possession of its subcontractors or agents, if it is feasible to do so.

2. If it is not feasible for Business Associate to return or destroy the PHI, Business Associate will notify Covered Entity of the reasons why it is not feasible and will retain the information in a manner consistent with this section.

3. If the information is not returned or destroyed upon termination or expiration, Business Associate agrees to extend the protections set forth in this Agreement to the PHI and to limit further uses or disclosures of the PHI to the purposes that make the return or destruction of the PHI infeasible for as long as the PHI is maintained by Business Associate.

G. Miscellaneous. The parties further agree:

1. References in this Agreement to provisions of the HIPAA Regulations and the HITECH Act shall mean those provisions as in effect or as they may be amended, including through new implementing regulations.

2. To take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Regulations, the HITECH Act, or regulations issued pursuant to the HITECH Act.

3. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Regulations, the HITECH Act and any regulations implementing the HITECH Act.

4. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligation or liabilities.

