

BUSINESS ASSOCIATE ADDENDUM

The following provisions in this addendum (“BA Addendum”) shall apply if Wheelhouse accesses, views, or assists in the storage or communication of, Client’s emails, documents, business plans, internal business communications, and related materials that are comprised of, or contain, PHI, ePHI, and/or other related private information. In this Addendum, Wheelhouse shall be referred to as the “Business Associate,” and Client shall be referred to as the “Covered Entity.”

1. Definitions.

(a) The following terms shall have the same meaning as those terms are defined by HIPAA: Administrative Safeguards, Breach, Breach Notification Rule, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information, Enforcement Rule, Individual, Information, Marketing, Minimum Necessary, Physical Safeguards, Privacy Rule, Protected Health Information (“PHI”), Required by Law, Secretary, Security, Security Incident, Security Rule, Subcontractor, Technical Safeguards, Unsecured Protected Health Information, Use, and Workforce Member.

(b) The terms “Personal Information” shall have the same meaning as those terms are defined by the Florida Data Privacy Laws; and “Breach of Security” (referred to as “Security Breach” in this Agreement) shall have the same meaning as those terms are defined by the Florida Data Privacy Laws.

(c) The term “Florida Data Privacy Laws” shall mean those relevant provisions of Florida’s data privacy-related laws set forth at Fl. Stat. § 501.171 and related sections.

(d) The terms “HIPAA” or “Privacy Laws” shall mean, collectively, the (i) provisions of Title II of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including, without limitation, the Privacy Rule and Security Rule, (ii) the provisions of the Health Information Technology for Economic and Clinical Health Act, which is a part of the American Recovery and Reinvestment Act of 2009, and (iii) the Florida Data Privacy Laws, each as updated, amended or supplemented from time to time.

(e) The term “Protected Information” shall mean, for the purposes of this BA Addendum, any or all of Protected Health Information and Personal Information.

(f) The term “Report” shall include the following information, submitted within ten (10) business days of the date on which the Business Associate knew of a Successful Security Incident or Breach, or as required for an Accounting as described below:

- Identification of each Individual whose Protected Information has been, or is reasonably believed to have been, affected;
- Description of what happened, including the date of the improper Use or Disclosure, Security Incident, Breach of Unsecured PHI, or Security Breach of Personal Information and the date of its discovery;
- Who Received the Protected Information;
- Description of the Protected Information involved;
- Description of Business Associate’s and its Subcontractors’ investigation and responses;
- Actions taken by Business Associate and its Subcontractors to prevent any further incidents;
- Actions taken by Business Associate and its Subcontractors to mitigate any deleterious effects; and,
- Additional information as reasonably requested by the Covered Entity.

2. Obligations of Business Associate.

(a) Permitted Uses. Business Associate may use or disclose PHI on behalf of, or provide services to, Covered Entity pursuant to the Agreement or as Required by Law. Except for the specific uses and disclosures set forth in this Section 2, Business Associate may not use or disclose Protected Information in a manner that would violate the Privacy Laws if done by Covered Entity.

(b) Permitted Disclosures. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Laws if disclosed by Covered Entity, except that Business Associate may disclose Protected Information: (i) in a manner permitted pursuant to this BA Addendum; (ii) for the proper management and administration of Business Associate, if such disclosure is allowable under the Privacy Laws; (iii) as Required by Law; (iv) with the express written permission of Covered Entity, for Data Aggregation purposes for the Health Care Operations of Covered Entity, or (v) to report violations of law to appropriate federal or state authorities. To the extent that Business Associate discloses Protected Information to a Subcontractor, Business Associate will obtain, prior to making any such disclosure: (i) reasonable assurances from such Subcontractor that such Protected Information will be held confidential and only disclosed as required by law or for the purposes for which it was disclosed to such Subcontractor. Business Associate shall

require timely and accurate reporting by such Subcontractor (or any third party to whom an authorized disclosure is made as provided above) of any breaches of confidentiality of the Protected Information, such that Business Associate can satisfy its obligations herein.

- (c) **Appropriate Safeguards.** Business Associate will implement and maintain appropriate safeguards to protect the confidentiality, integrity and availability of Protected Information that it accesses, receives, maintains, stores, processes or transmits on behalf of Covered Entity, as required by the Security Rule.
- (d) **Reporting of Improper Uses or Disclosures, Security Incidents and Breaches.**
- (i) **Breach and Other Privacy Rule Violations.** Business Associate shall Report to Covered Entity any use or disclosure of Protected Information not permitted by this BA Addendum or that is in violation of any provision of Privacy Laws or Security Rule within ten (10) business days after the date on which Business Associate learns of such occurrence.
- (ii) **Security Incidents.** Business Associate shall Report all Security Incidents and Security Breaches to Covered Entity, in accordance with the Security Rule.
- (e) **Business Associate's Subcontractors.** If Business Associate uses one or more Subcontractors to provide services under the Agreement, and such Subcontractors have the same or greater likelihood to receive or have access to Protected Information as the Business Associate, each Subcontractor shall sign an agreement with Business Associate containing substantially the same or more protective provisions as this BA Addendum.
- (f) **Resold Services.** Certain services provided under the Agreement may be provided to Covered Entity directly by one or more third parties over which Business Associate has no control ("Resold Services"). To the extent that such third parties have access to, store, view, or assist in the storage or communication of Protected Information, the applicable third parties will be responsible for their own compliance with the Privacy Laws. Business Associate shall not be responsible for the actions or omissions of third parties or such third parties' compliance with the Privacy Laws while providing the Resold Services to Covered Entity.
- (g) **Access to PHI.** Business Associate shall make PHI maintained by Business Associate or its Subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) business days of a request by Covered Entity.
- (h) **Amendment of PHI.** The Services to be provided by Business Associate under the Agreement do not require the Business Associate to maintain Protected Information for any purpose pertaining to the health care needs of any individual, but solely to maintain certain records as part of the Services. It is not, therefore, anticipated that Business Associate will receive a request from Covered Entity for an amendment of PHI. Should an unusual situation cause Covered Entity to make such a request of Business Associate, then Business Associate and its Subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule. If any individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate must make a Report to Covered Entity. Any decision to deny the amendment of PHI maintained by Business Associate or its Subcontractors shall be the responsibility of Covered Entity, and Business Associate and its Subcontractors shall not interfere with implementation of Covered Entity's decision to approve or deny such amendment.
- (i) **Accounting Rights.** The Services to be provided by Business Associate under the Agreement do not require the Business Associate to maintain Protected Information for any purpose pertaining to the health care needs of any individual, but solely to maintain records as part of the Services. It is not, therefore, anticipated that Business Associate will receive a request from Covered Entity for an accounting of disclosures of Protected Information. The Reports of all Security Breaches described above shall be sufficient, absent unusual circumstances, to enable Covered Entity to fulfill its obligations under the Privacy Rule. Further, to enable Covered Entity to comply with Applicable Law, Business Associate shall provide a Report to Covered Entity of disclosures: (a) for national security or intelligence purposes as set forth in 45 C.F.R. Section 164.512(k)(2); or (b) to law enforcement officials as set forth in 45 C.F.R. Section 164.512(k)(5). In the event that the request for an accounting is delivered directly to Business Associate or its Subcontractors, Business Associate shall Report the request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested, and Business Associate and its Subcontractors shall not interfere with implementation of Covered Entity's method of preparing such accounting.
- (j) **Restrictions and Confidential Communications.** The Services to be provided by Business Associate under the Agreement do not require the Business Associate to maintain Protected Information for any purpose pertaining to the health care needs of any individual, but solely to maintain records as part of the Services. It is not, therefore, anticipated that Business Associate will receive a request from Covered Entity or an Individual to restrict the Protected Information of such Individual. Nevertheless, to facilitate Covered Entity's compliance with the Privacy Laws, within ten (10) business days of notice by Covered Entity of a restriction upon uses or disclosures or request for confidential communications, Busi-

Business Associate and its Subcontractors will restrict the use or disclosure of an individual's Protected Information. Business Associate and its Subcontractors will not respond directly to an Individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Business Associate and its Subcontractors will refer such requests to the Covered Entity immediately so that the Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

(k) **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of HHS in a time and manner designated by the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

(l) **Minimum Necessary.** Business Associate (and its Subcontractors, if any) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the Agreement, in accordance with the Minimum Necessary requirements of the Privacy Rule.

(m) **Data Ownership.** Business Associate acknowledges that it has no ownership rights with respect to the Protected Information.

(n) **Audits, Inspection and Enforcement.** Within ten (10) business days of a written request by Covered Entity, Business Associate shall, and shall require its Subcontractors to, make available to Covered Entity for inspection and copying any PHI that Business Associate or Subcontractor created or received for or from Covered Entity and that is in Business Associate's or Subcontractor's custody or control, and shall provide such access and information concerning its facilities, procedures and systems so that the Covered Entity may meet its obligations under the Privacy Laws.

(o) **Restrictions and Confidential Communications.** Within ten (10) business days of notice by Covered Entity of a restriction upon uses or disclosures or request for confidential communications, Business Associate will restrict the use or disclosure of an individual's Protected Information. Business Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information and will refer such requests to the Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the requesting individual and provide direction to Business Associate.

(p) **Safeguards During Transmission.** Business Associate shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to Covered Entity by Business Associate pursuant to the Agreement, in accordance with the standards and requirements of the Privacy Laws, until such Protected Information is received by Covered Entity.

3. **Obligations of Covered Entity.** In accordance with the terms of the Agreement, Covered Entity and Business Associate shall be mutually responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to Business Associate pursuant to the Agreement and in accordance with the standards and requirements of the Privacy Laws.

4. **Term and Termination.**

(a) **Judicial or Administrative Proceedings.** Either party may terminate this BA Addendum, effective immediately, if the other party is named as a defendant in a criminal proceeding for a violation of the Privacy Laws or other security or privacy laws.

(b) **Effect of Termination.** Upon termination of this BA Addendum for any reason, Business Associate shall return or destroy all Protected Information that Business Associate or its Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Business Associate elects to destroy the Protected Information, Business Associate shall notify Covered Entity of such election and certify in writing to Covered Entity that such Protected Information has been destroyed in accordance with applicable law and any other instructions provided by Covered Entity. If Business Associate is unable to locate Covered Entity, or Covered Entity does not timely respond to Business Associate's communications regarding the return or destruction of the Protected Information, or Covered Entity does not accept the return of the Protected Information, Business Associate shall be permitted to destroy all copies of the Protected Information in its custody or control within twenty (20) days thereafter.

5. **Indemnification.** Business Associate shall indemnify, defend and hold harmless Covered Entity and its directors, officers, subcontractors, workforce members, affiliates, agents, and representatives from and against any and all third party liabilities, costs, claims, suits, actions, proceedings, demands, losses and liabilities of any kind (including court costs and reasonable attorneys' fees) brought by a third party, arising from or relating to the acts or omissions of Business Associate or any of its directors, officers, Subcontractors, workforce members, affiliates, agents, and representatives in connection with Business Associate's performance under this BA Addendum.

6. **Miscellaneous.**

- (a) Injunctive Relief. Covered Entity shall have the right to injunctive and other equitable and legal relief against Business Associate or any of its subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this BA Addendum or applicable law.
- (b) Limitation of Liability. Except with respect to gross negligence, willful misconduct, or fraud by Business Associate, the limitation of Business Associate's liability to Covered Entity for breach of this BA Addendum shall be the same as set forth in the Agreement.
- (c) Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this BA Addendum may be required to provide for procedures to ensure compliance with such developments. The parties agree to take such action as is necessary to implement the standards and requirements of the Privacy Laws and other applicable laws relating to the security or privacy of Protected Information.
- (d) Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any Subcontractors or employees assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity to respond to litigation or administrative proceedings, at Covered Entity's cost.
- (e) No Third Party Beneficiaries. Nothing in this BA Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, Subcontractors, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- (f) Interpretation and Order of Precedence. The provisions of this BA Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BA Addendum. This BA Addendum shall be interpreted as broadly as necessary to implement and comply with the Privacy Laws. The parties agree that any ambiguity in this BA Addendum shall be resolved in favor of a meaning that complies and is consistent with the Privacy Laws.