

SUBCONTRACTOR BUSINESS ASSOCIATE ADDENDUM

THIS SUBCONTRACTOR BUSINESS ASSOCIATE ADDENDUM (“**BAA**”) supplements and is made part of a Membersy Enterprise Plan Administration Agreement (hereinafter, the “**Agreement**”) by and between Client (hereinafter, “**Business Associate**”) and Membersy (hereinafter, “**Subcontractor**”) to be effective upon execution of the Agreement. Business Associate and Subcontractor are sometimes singularly referred to as “**Party**” and collectively as “**Parties**”. All capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

WHEREAS, Business Associate is a dental services organization providing administrative and support services to one or more affiliated dental practices (collectively referred to herein as “**Covered Entity**”);

WHEREAS, the Parties anticipate that (i) the Agreement may require Business Associate to use, disclose, access, create, maintain, transmit and/or receive Protected Health Information (as defined herein) on behalf of Covered Entity, and (ii) Subcontractor, as a subcontractor of Business Associate, may likewise be required to use, disclose, access, create, maintain, transmit and/or receive Protected Health Information on behalf of Business Associate and Covered Entity in performance of the Agreement; and

WHEREAS, the Parties seek to comply with the standards for privacy and security of Protected Health Information set forth in the Health Insurance Portability and Accountability Act of 1996, Health Information for Economic and Clinical Health Act, and the rules and regulations promulgated thereunder (including the HIPAA Omnibus regulations promulgated on January 25, 2013), all as the same may be amended from time to time (collectively, “**HIPAA**”), as well as other applicable state and federal laws and regulations protecting Protected Health Information.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Parties agree as follows:

A. DEFINITIONS.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the HIPAA Rules. The following required definitions are as set forth in 45 C.F.R. Parts 160 and 164 (the “**Privacy Rule**”):

1. “**Business Associate**” shall have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean Client.
2. “**Covered Entity**” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103 and shall be used herein to refer collectively to any and all covered entities on whose behalf Business Associate and/or Subcontractor use, disclose, access, create, maintain, transmit and/or receive Protected Health Information (hereinafter defined).
3. “**Designated Record Set**” means: (1) A group of records maintained by or for a Covered Entity that is: (i) The medical records and billing records about Individuals maintained by or for a covered Health Care provider; (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. For purposes of this paragraph, the term “record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.
4. “**Disclosure**” means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
5. “**Health Care**” means care, services, or supplies related to the health of an Individual. Health Care includes, but is not limited to, the following: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an Individual or that affects the structure or function of the body; and (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.
6. “**Health Information**” means any information, including genetic information, whether oral or recorded in any form or medium, that: (1) is created or received by a Health Care provider, health

plan, public health authority, employer, life insurer, school or university, or Health Care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of Health Care to an Individual; or the past, present, or future payment for the provision of Health Care to an Individual.

7. **"HIPAA Rules"** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
8. **"Individual"** means the person who is the subject of Protected Health Information.
9. **"Individually Identifiable Health Information"** is information that is a subset of Health Information, including demographic information collected from an Individual, and: (1) is created or received by a Health Care provider, health plan, employer, or Health Care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of Health Care to an Individual; or the past, present, or future payment for the provision of Health Care to an Individual; and (i) that identifies the Individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
10. **"Protected Health Information"** or **"PHI"** means Individually Identifiable Health Information that is: (i) transmitted by electronic media; (ii) maintained in any medium of electronic media; or (iii) transmitted or maintained in any other form or medium. PHI shall specifically include electronic protected health information, or EPHI. PHI excludes Individually Identifiable Health Information: (i) in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232 (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), (iii) in employment records held by a Covered Entity in its role as employer and (iv) regarding a person who has been deceased for more than 50 years.
11. **"Subcontractor"** shall generally have the same meaning as the term "subcontractor" at 45 C.F.R. § 160.103, and in reference to the party to this BAA, shall mean Membersy.
12. **"Use"** means with respect to Individually Identifiable Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

B. DUTIES AND RESPONSIBILITIES OF SUBCONTRACTOR.

1. Subcontractor shall use, disclose, access, create, maintain, transmit and/or receive PHI on behalf of Business Associate and Covered Entity only as permitted or required by applicable law, as required to perform the services under the Agreement or as permitted or required by the terms of this BAA.
2. Subcontractor shall ensure that all disclosures of PHI by Subcontractor comply with the principle of **"minimum necessary use and disclosure,"** (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).
3. Subcontractor may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except as follows:
 - a. Subcontractor may use PHI for the proper management and administration of the Subcontractor or to carry out the legal responsibilities of the Subcontractor.
 - b. Subcontractor may disclose PHI for the proper management and administration of Subcontractor or to carry out the legal responsibilities of the Subcontractor, provided the disclosures are required by law, or Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.
 - c. Subcontractor may provide data aggregation services relating to the Health Care operations of Covered Entity.
4. Subcontractor shall use appropriate safeguards and shall comply with Subpart C of 45 C.F.R. Part 164 with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by this BAA. Subcontractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the Subcontractor of a use or disclosure of PHI by Subcontractor in violation of the requirements of this BAA.
5. Subcontractor shall report in writing to Business Associate without unreasonable delay, and in no event more than three (3) business days following discovery, any use or disclosure of PHI not

provided for by this BAA of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware.

6. If Subcontractor uses or contracts with any agent, including a subcontractor, that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of the Subcontractor, Subcontractor shall require any such agent to agree in writing to the same restrictions and conditions that apply to Subcontractor under this BAA.
7. To the extent that Subcontractor possesses or maintains PHI in a Designated Record Set, Subcontractor agrees to:
 - a. Provide Business Associate and/or Covered Entity with access to such PHI within three (3) business days of request from the Business Associate;
 - b. Make any amendment(s) to PHI in a Designated Record Set that Business Associate or Covered Entity directs or agrees to in accordance with HIPAA Rules within three (3) business days of any such request; and
 - c. Notify Business Associate within three (3) business days if Subcontractor receives a request from an Individual to access or amend the Individual's PHI, and to cooperate with Business Associate and Covered Entity to permit Covered Entity to respond to such Individual.
8. Subcontractor 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 for an accounting of disclosures as set forth at 45 C.F.R. § 164.528. Subcontractor will report to Business Associate on a timely basis, but no later than fifteen (15) days following a written request by Business Associate, sufficient information for Covered Entity to comply with the accounting for disclosures requirements of 45 C.F.R. § 164.528. Subcontractor shall (i) notify Business Associate within three (3) business days if Subcontractor receives a request from an Individual for an accounting of disclosures, and (ii) cooperate with Business Associate and Covered Entity to permit Covered Entity to respond to the Individual.
9. To the extent that Subcontractor carries out one or more of Business Associate's obligation(s) under HIPAA, Subcontractor shall comply with the requirements that apply to the Business Associate in the performance of such obligation(s).
10. Subcontractor shall make its internal practices, books, and records directly relating to the use and disclosure of PHI received from Business Associate or created or received by Subcontractor on behalf of Business Associate and/or Covered Entity available to the Secretary of the United States Department of Health or Human Services or his or her designee ("**Secretary**"), for purposes of determining compliance with the HIPAA Rules.
11. Subcontractor may disclose the PHI received by Subcontractor if either:
 - a. The disclosure is required by law; or
 - b. Subcontractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially 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 Subcontractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

C. DUTIES AND RESPONSIBILITIES OF BUSINESS ASSOCIATE.

1. Business Associate shall enter into and maintain a Business Associate Agreement which meets the requirements of the HIPAA Rules with any and all Covered Entities on whose behalf Business Associate and/or Subcontractor use, disclose, access, create, maintain, transmit and/or receive Protected Health Information for the purposes of this BAA and the Agreement.
2. In the event that Covered Entity notifies Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, Business Associate shall promptly notify Subcontractor of such limitation(s) to the extent that any such limitation may affect Subcontractor's use or disclosure of PHI.
3. In the event that Covered Entity notifies Business Associate of any changes to, or revocation of, the authorization of an individual regarding the use or disclosure of PHI, Business Associate shall promptly notify Subcontractor of such changes to the extent that such changes may affect Subcontractor's use or disclosure of PHI.

4. In the event that Covered Entity notifies Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, Business Associate shall promptly notify Subcontractor of such restriction(s) to the extent that any such restriction may affect Subcontractor's use or disclosure of PHI.

D. GENERAL PROVISIONS

1. Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party and its officers, directors, employees and agents against any loss, claim, damage or liability if and to the extent proximately caused by the indemnifying Party's (i) violation of a material term of this BAA, or (ii) violation of HIPAA.
2. Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
3. Amendment. The Parties agree to take such action as may be necessary to amend this BAA to comply with the requirements of the HIPAA Rules and any other applicable law.
4. Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Business Associate and Subcontractor to comply with the HIPAA Rules.
5. No Waiver. The failure of any Party at any time to require performance of any provision or to resort to any remedy provided under this BAA shall in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any Party of a breach be deemed to be a waiver of any subsequent breach. A waiver shall not be effective unless it is in writing and signed by the Party against whom the waiver is being enforced.
6. Notices. All notices, demands, and all other communications required or permitted to be given or made under this BAA shall be given or made in the same manner as set forth in the Agreement.

E. TERM/TERMINATION.

1. Term and Termination. The term of this BAA shall become effective upon execution of the Agreement and shall continue thereafter until the Agreement expires or is terminated for any reason, whereupon this BAA shall terminate automatically.
2. Termination for Cause. A breach or violation of this BAA by either Party shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement as follows:
 - a. If either Party knows or reasonably believes that an activity or practice of the other Party constitutes a breach or violation of its duties and responsibilities under this BAA, the non-breaching Party shall provide written notice to the Party alleged to be in breach of such breach or violation. If the Party alleged to be in breach is unable to cure such breach or end such violation within fifteen (15) days of such notice, the non-breaching Party may terminate the Agreement by providing written notice of termination for cause.
3. Obligations of Subcontractor Upon Termination. Upon termination of this BAA for any reason, Subcontractor, with respect to PHI received from Business Associate and/or Covered Entity, or created, maintained, or received by Subcontractor on behalf of Business Associate and/or Covered Entity, shall return such PHI to Business Associate or, if agreed to by Business Associate, destroy the remaining PHI that the Subcontractor still maintains in any form; however, if such return or destruction is not feasible, then Subcontractor shall extend the protections of the BAA to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
4. Survival. The obligations of Subcontractor set forth in Section E.3 above shall survive the termination of this BAA.

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