



TEXAS MEDICAL LIABILITY TRUST

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BUSINESS ASSOCIATE AGREEMENT

Recitals

TMLT and the policyholder have an insurer/insured relationship by virtue of a professional liability policy issued by TMLT to the policyholder (hereinafter "Insurance Policy"). TMLT and the named policyholder are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulations") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Under the Privacy Regulations, the policyholder is a "covered entity," and, as defined by 45 CFR § 164.502(e) and 45 CFR § 164.504(e), TMLT is a business associate of the policyholder. TMLT must use and/or disclose Protected Health Information, as defined in 45 CFR § 164.501, in its performance of services under the Insurance Policy. TMLT agrees to abide by the assurances, terms, and conditions contained herein in the performance of its obligations. This Agreement sets forth the manner in which Protected Health Information, that is provided to, or received by, TMLT from the policyholder, or on behalf of the policyholder, will be handled. TMLT agrees as follows:

SECTION I

Obligations and Activities of Business Associate

- 1.1 Not to Use or Disclose Protected Health Information Unless Permitted.** TMLT may receive from policyholder health information protected under state or federal law, including Protected Health Information and/or electronic Protected Health Information (hereinafter both shall be referred to as Protected Health Information). TMLT agrees not to use, or further disclose, Protected Health Information other than as permitted or required by the Agreement or as required or allowed by law.
- 1.2 Use Safeguards.** TMLT agrees to use reasonable safeguards to prevent use or disclosure of the Protected Health Information other than as allowed by this Agreement or as otherwise required or allowed by law. TMLT acknowledges that the HITECH Act requires TMLT to comply with the security provisions in 45 CFR § 164.308, 164.312 and 164.316 as well as all additional security provisions of the HITECH Act as if TMLT were a covered entity.
- 1.3 Report Inappropriate Disclosures of Protected Health Information.** TMLT agrees to report to policyholder any use or disclosure of the Protected Health Information not permitted by this Agreement or by law of which it becomes aware. TMLT will comply with Section 13402 of the HITECH Act with respect to timeliness, method and content of the report.
- 1.4 Compliance of Agents.** TMLT agrees to require any agents, including subcontractors, to agree to the same restrictions and conditions that apply to TMLT through this Agreement provided that such agents perform a service that TMLT agreed to perform for, or on behalf of, the policyholder under the Insurance Policy, and to whom TMLT provides Protected Health Information.
- 1.5 Access.** To the extent that TMLT maintains an original Designated Record Set, as such term is defined in 45 CFR § 164.501, or a part thereof, TMLT agrees to provide access to the policyholder to Protected Health Information in the original Designated Record Set, during normal business hours, provided the policyholder delivers prior written notice to TMLT, at least five business days in advance, requesting such access but only to the extent required by 45 CFR § 164.524.
- 1.6 Amendments.** To the extent TMLT maintains an original Designated Record Set, or a part thereof, TMLT agrees to make Protected Health Information available for amendment to the policyholder and to incorporate any amendment(s) to Protected Health Information in the original Designated Record Set that the policyholder directs, pursuant to 45 CFR § 164.526.
- 1.7 Disclosure of Practices, Books, and Records.** Unless otherwise protected from discovery or disclosure by law or unless otherwise prohibited from discovery or disclosure by law, TMLT agrees to make internal practices, books, and records available to the policyholder or to the Secretary of the Department of Health and Human Services, hereinafter referred to as "Secretary," for purposes of the Secretary determining the policyholder's compliance with the Privacy Regulations but only to the extent such access is related to the use and disclosure of Protected Health Information received from the policyholder, or created or received by TMLT on behalf of the policyholder. TMLT shall have a reasonable time within which to comply with such requests and, in no case shall access be required in less than five business days after TMLT is in receipt of such request.
- 1.8 Accounting.** Pursuant to 45 CFR § 164.528, as amended by Section 13405 (c) of the HITECH Act and any related regulations or guidelines, TMLT agrees to maintain sufficient documentation of disclosures of Protected Health Information and information related to such disclosures as would be required for the policyholder to respond to a request by an Individual for an accounting of

disclosures of Protected Health Information. The documentation of disclosures does not apply to disclosures necessary to carry out health care operations and Services, as defined in Section 2.1, and other functions necessary to perform these Services.

- 1.9 Release of Documentation of Disclosure.** TMLT agrees to provide to the policyholder information collected in accordance with Section 1.8 of this Agreement, to permit the policyholder to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

SECTION 2

Permitted Uses and Disclosures by Business Associates

- 2.1 Use of Protected Health Information for Specified Purposes.** Except as otherwise required by law, TMLT shall use PHI in compliance with 45 CFR § 164.504e. Under the Insurance Policy, TMLT provides the policyholder with insurance products and services (hereinafter “Services”) that involve the use and disclosure of Protected Health Information as defined by the Privacy Regulations. These Services may include, among others, the provision of professional liability insurance; receiving and evaluating incidents, claims, and lawsuits; quality assessment; quality improvement; loss prevention tools; outcomes evaluation; protocol and clinical guidelines development; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting training programs to improve the skills of health care practitioners and providers; credentialing, conducting or arranging for medical review; arranging for legal services; conducting or arranging for audits to improve compliance; resolution of internal grievances; placing stop-loss and excess of loss insurance, and other functions necessary to perform these Services. Except as otherwise specified herein, TMLT may make any uses of Protected Health Information necessary to perform its obligations under this Agreement and under the Insurance Policy, if such use of Protected Health Information would not violate the Privacy Regulations. Moreover, TMLT may disclose Protected Health Information for the purposes authorized by this Agreement: (i) to its employees, subcontractors, and agents, in accordance with paragraphs Section 2.2 through 2.4 of this Section below; or (ii) as otherwise permitted by the terms of this Agreement. All other uses not authorized by this Agreement are prohibited.
- 2.2 Use of PHI for Business Associate Management and Administration.** TMLT may use Protected Health Information for the proper management and administration of TMLT or to carry out the legal responsibilities of TMLT.
- 2.3 Disclosure Required by Law or With Reasonable Assurances.** TMLT may disclose Protected Health Information for proper management and administration and to carry out its legal responsibilities, provided that disclosures are required by law, or provided that the TMLT obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: 1) the Protected Health Information will remain confidential; 2) the Protected Health Information will be used or further disclosed only as required by law or for the purposes for which it was disclosed; and, 3) the person or entity will notify TMLT of any instances of which the person or entity is aware in which the confidentiality of the information has been breached. In compliance with Section 13405(b) of the HITECH act, TMLT will only disclose the minimum necessary to accomplish the intended purpose of the disclosure and, if applicable, to the limited data set as defined in 45 CFR § 164.514(e)(2).
- 2.4 Data Aggregation Services.** If necessary to provide services related to a policyholder’s health care operations, TMLT may use Protected Health Information to provide data aggregation services to the policyholder as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- 2.5 Disclosure to Report Violations of Law.** TMLT may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

SECTION 3

Obligations of and Permissible Requests by Policyholder

- 3.1 Notification of Limitation(s).** The policyholder shall notify TMLT of any limitation(s) in its notice of privacy practices of the policyholder in accordance with 45 CFR § 164.520, to the extent that such limitation may affect TMLT’s use or disclosure of Protected Health Information.
- 3.2 Notification of Changes or Revocation.** The policyholder shall notify TMLT of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect TMLT’s use or disclosure of Protected Health Information.
- 3.3 Notification of Restriction.** The policyholder shall notify TMLT of any restriction to the use or disclosure of Protected Health Information that the policyholder has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect TMLT’s use or disclosure of Protected Health Information.
- 3.4 Permissible Requests.** The policyholder shall not request TMLT to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by the policyholder. This provision does not apply to TMLT’s use or disclosure of Protected Health Information for data aggregation or management and administrative activities as is otherwise permitted by this Agreement.

SECTION 4 Term and Termination of Agreement

- 4.1 Term.** The Term of this Agreement shall be effective beginning April 14, 2003 and shall terminate when all of the Protected Health Information provided by the policyholder to TMLT, or created or received by TMLT on behalf of the policyholder, is destroyed. Protected Health Information is securely retained and/or destroyed as designated by TMLT policies for retention and destruction of Protected Health Information. Protections are extended to such information, in accordance with the termination provisions in this section. This agreement shall supersede any existing business associate agreements issued in accordance with the Privacy Regulations under the Health Insurance Portability and Accountability Act of 1996.
- 4.2 Termination for Cause.** Upon the policyholder's knowledge of a material breach by TMLT of this Agreement, the policyholder shall either:
- (1) Provide an opportunity for TMLT to cure the breach or end the violation within a reasonable period of time. If TMLT does not cure the breach or end the violation within the reasonable period of time specified by the policyholder, the policyholder shall terminate this Agreement and the underlying Insurance Policy;
 - (2) Immediately terminate this Agreement and the underlying Insurance Policy if TMLT has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cure is feasible, the policyholder shall report the violation to the Secretary.
- 4.3 Effect of Termination.**
- (1) Due to the infeasibility of returning Protected Health Information to the policyholder, upon termination of this Agreement and/or the underlying Insurance Policy, for any reason, TMLT shall securely retain and/or destroy all Protected Health Information received from the policyholder, or created or received by TMLT on behalf of the policyholder in accordance with TMLT's policies for retention and destruction of Protected Health Information.
 - (2) TMLT shall limit further uses and disclosures to those purposes that make the return of the Protected Health Information infeasible. TMLT shall extend the protections of this Agreement to such Protected Health Information for so long as TMLT maintains such Protected Health Information.

SECTION 5 Miscellaneous Provisions

- 5.1 Regulatory References.** A reference in this Agreement to a section in the Privacy Regulations means the section as in effect or as amended.
- 5.2 Amendment.** TMLT and the policyholder agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the policyholder to comply with the requirements of the Privacy Regulations and HIPAA.
- 5.3 Survival.** The respective rights and obligations of TMLT under Section 4.3 of this Agreement shall survive the termination of this Agreement.
- 5.4 Interpretation.** Any ambiguity in this Agreement shall be resolved to permit TMLT to comply with the Privacy Regulations.



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