

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is entered into this 17th day of February, 2010 between _____ and its affiliates (collectively a Covered Entity “CE”) and Medical Electronic Attachment, Inc. (“Business Associate”) (collectively the “Parties”). This Agreement satisfies the Parties’ obligations with respect to business associate agreements as set forth in 45 CFR 164.502(e) and 164.504(e) of HIPAA and Sections 13400 through 13411 of the HITECH Act.

RECITALS

WHEREAS, the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations, as amended from time to time require that contracts between Covered Entities and Business Associates comply with enumerated standards and requirements; and

WHEREAS, this Agreement contains provisions designed to ensure compliance with the HIPAA and HITECH requirements and standards.

NOW THEREFORE, CE and Business Associate hereby agree as follows:

ARTICLE 1. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103, 164.103, 164.304 and 164.501; and HITECH Act Sections 13400 and 13402.

1.1 **Breach:** “Breach” means the unauthorized acquisition, access, use or disclosure of protected health information where such breach compromises the security or privacy of such information.

1.2 **Business Associate:** “Business Associate” shall mean a person or entity providing certain functions, activities or services on behalf of CE involving the use and/or disclosure of Protected Health Information (PHI).

1.3 **CFR:** “CFR” is the Code of Federal Regulations.

1.4 **Covered Entity:** “Covered Entity” means a (1) health plan; (2) health care clearinghouse; or (3) health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.

1.5 **Data Aggregation:** “Data Aggregation” shall mean, with respect to PHI created or received by the Business Associate in its capacity as the Business Associate of CE, the combining of such PHI by the Business Associate with the PHI received by the Business

Associate in its capacity as business associate of another covered entity, to permit data analyses that relates to the healthcare operations of the respective entities.

1.6 Health Insurance Portability and Accountability Act (HIPAA): “HIPAA” shall mean federal legislation effective in 1996 which addresses the requirements for the privacy of individually identifiable health information (IIHI) and Protected Health Information (PHI). As used herein, “HIPAA” shall also, where applicable, refer to the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160 and 164).

1.7 HITECH Act: “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.

1.8 Individual: “Individual” shall have the same meaning as the term ‘individual’ in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g)

1.9 Individually Identifiable Health Information (IIHI): “IIHI” shall mean Information that is a subset of health information including demographic information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- b. 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 healthcare to an individual and;
 - i. Identifies the individual; or
 - ii. With respect to which, there is a reasonable basis to believe that the information can be used to identify the individual.

1.10 Minimum Necessary: “Minimum Necessary” means the disclosure of only that information which is required to accomplish the intended purpose of such use, disclosure or request. Where practicable, the information disclosed under the Minimum Necessary requirement shall be restricted to the limited data set as defined in 45 CFR 164.514(e)(2). This definition will be amended to reflect additional guidance as issued under HITECH should such guidance be provided as described in HITECH Section 13405 (b).

1.11 Privacy Rule: “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.12 Protected Health Information (PHI): “PHI” shall mean individually identifiable health information that is or has been maintained in or transmitted by electronic or other media.

1.13 Required By Law: “Required by Law” shall have the same meaning as the term “required by law” as defined in 45 CFR 164.103.

1.14 Secretary: “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services, or his or her designee.

1.15 Security Incident: “Security Incident” is further defined in 45 CFR.304 and means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.16 Security Rule: “Security Rule” shall mean the Security Standards at 45 CFR part 160, and part 164, subparts A and C.

1.17 Unsecured PHI: “Unsecured PHI” is further defined in Section 13402 of the HITECH Act and means protected health information that is not secured through the use of a technology or methodology that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

ARTICLE 2. GENERAL PROVISIONS

2.1 Effect. This Business Associate Agreement supplements, modifies and amends any existing agreement between the parties involving the disclosure of Protected Health Information (“PHI”) by CE to Business Associate, or the creation or receipt of PHI by Business Associate on behalf of CE. The terms and provisions of this Business Associate Agreement shall supersede any conflicting or inconsistent terms and provisions in any Agreement(s) between the parties, including all exhibits or other attachments thereto and all documents incorporated therein by reference. Without limiting the foregoing, any limitation or exclusion of damages provisions shall not be applicable to this Business Associate Agreement.

2.2 Amendment. CE and Business Associate agree to amend this Agreement to the extent necessary to allow either party to comply with HIPAA and the HITECH Act (collectively, the "Standards"), promulgated or to be promulgated by the Secretary or other regulations or statutes. Business Associate agrees that it will fully comply with all such Standards and that it will agree to amend this Agreement to incorporate any material required by the Standards.

ARTICLE 3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

3.1 Application of Security Rule and Privacy Rule to Business Associate. The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312 and 164.316, shall apply to Business Associate in the same manner that such sections apply to CE. The additional requirement of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business associate and are hereby incorporated into this Agreement.

3.2 Uses and Disclosures of Protected Health Information

- 3.2.1 Business Associate, its directors, officers, employees, contractors and agents agree to not use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.
- 3.2.2 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of CE as specified in Attachment A, provided such use or disclosure would not violate the Privacy Rule if performed by CE.
- 3.2.3 Business Associate may use and disclose PHI:
 - (a) For the proper management and administration of Business Associate;
 - (b) To carry out Business Associate's legal responsibilities, and
 - (c) As necessary for data aggregation purposes relating to the health care operations of CE as permitted by 45 CFR 164.504(e)(2)(i)(B), but only as separately authorized by CE in writing.
- 3.2.4 Business Associate acknowledges that, as between Business Associate and CE, all PHI shall be and remain the sole property of CE, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to this Agreement.
- 3.2.5 Business Associate agrees that, to the extent Business Associate requests disclosure of PHI from CE, such request is only for the minimum necessary PHI for the accomplishment of Business Associate's purpose. For any disclosure or use of PHI, Business Associate shall determine and use the minimum necessary information to accomplish the intended purpose of the use or disclosure.

3.3 Appropriate Safeguards. Business Associate agrees to:

- a. Implement appropriate administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity and availability of all PHI that it creates, receives, maintains, or transmits on behalf of CE;
- b. Upon request of CE, Business Associate shall promptly provide CE with information regarding such safeguards;
- c. Ensure that any agent, including agents, contractors and subcontractors, to whom Business Associate provides PHI agrees to implement reasonable and appropriate safeguards as required by HIPAA and the HITECH Act to protect such PHI; and
- d. Report to CE any violation of the Security Rule of which Business Associate becomes aware.

3.4 Reporting Disclosures of PHI

3.4.1 Business Associate shall report to CE any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. Notice of such use or disclosure shall be provided to CE in writing as soon as possible, but in no event later than five (5) business days from the date on which Business Associate discovers the improper use or disclosure. Such notice shall include:

- a. a description of the occurrence, including the date of the breach and the date of the discovery;
- b. the name(s) of the individual(s) whose PHI was used or disclosed;
- c. the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,
- d. description of the types of unsecured PHI that was disclosed,
- e. the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.

3.4.2 Business Associate agrees to mitigate, to the extent practical, any harmful effect that is known to Business Associate resulting from any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's violation of the requirements of this Agreement or its failure to properly secure PHI in accordance with guidelines published by the Department of Health and Human Services.

3.4.3 Business Associate agrees to take prompt and appropriate corrective action to cure any deficiencies that caused the unauthorized use or disclosure and to implement additional actions intended to prevent other unauthorized disclosure.

3.5 Agents, Contractors and Subcontractors

3.5.1 Business Associate shall ensure that any agent, contractor or subcontractor to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of CE agrees to be bound by the same restrictions, terms and conditions that apply through this Agreement to Business Associate with respect to such information.

3.5.2 Business Associate agrees to enter into a written contract with such agents, contractors or subcontractors to ensure that such agents, contractors, or subcontractors abide by the same restrictions and conditions that apply to the party when acting as a Business Associate with regard to PHI. Business Associate shall provide a copy of such contracts to CE upon request.

3.6 Retention of PHI. Business Associate shall maintain and retain PHI for the term of the Agreement and make such PHI available to CE as set forth in this Agreement.

3.7 Access to Information

3.7.1 Within ten (10) business days of a request by CE, Business Associate shall make available to CE the requested PHI to permit CE to respond to an individual's request for access to PHI.

3.7.2 If Business Associate receives a request directly from an individual seeking access to or copies of PHI maintained by Business Associate for or on behalf of CE, Business Associate shall notify CE within five (5) business days. Notwithstanding the foregoing, Business Associate shall directly respond to such individual requests when and as directed by CE.

3.8 Availability of Protected Health Information for Amendment. Within ten (10) business days of receipt of a request from CE for the amendment of an individual's PHI, Business Associate shall provide such information to CE for amendment and shall incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. Business Associate shall notify agents, contractors and subcontractors who receive PHI of any such amendments.

3.9 Accounting of Disclosures. Within ten (10) business days of notice by CE to Business Associate that it has received a request for an accounting of disclosures of PHI, when such disclosures were made less than six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to CE such information as is in Business Associate's possession and is required for CE to make the accounting required by 45 C.F.R. §164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act Section 13405(c). At a minimum, Business Associate shall provide CE with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) business days forward such request to CE.

3.10 Availability of Business Associate's Internal Practices, Books and Records. Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created, or received by Business Associate on behalf of CE, available to CE, or to the Secretary of Health and Human Services for purposes of determining CE compliance with this Agreement and the Privacy Rule.

3.11 Recordkeeping. Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Agreement and the Privacy and Security Rules.

3.12 Prohibition Against Sale or Marketing of PHI. Except as otherwise provided in the HITECH Act or its implementing regulations, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual, or use or

disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.

3.13 **Report of Security Incidents.** Business Associate shall report to CE any security incident of which it becomes aware in the following time and manner:

- a. Any actual, successful security incident will be reported to CE in writing within five (5) business days of the date on which the Business Associate becomes aware of such security incident.
- b. Any attempted, unsuccessful security incident of which Business Associate becomes aware will be reported to CE in writing, on a reasonable basis, at the written request of CE. If the Security Rule is amended to remove the requirement to report unsuccessful attempts at unauthorized access, this subsection shall no longer apply as of the effective date of the amendment of the Security Rule.

Any report required pursuant to this section shall: (i) identify the nature of the security incident; (ii) identify the PHI subject to the security incident; and (iii) identify what Business Associate has done or shall do to mitigate and correct any adverse effect of the security incident.

ARTICLE 4. OBLIGATIONS AND ACTIVITIES OF CE

4.1 CE shall notify Business Associate of any limitation(s) in the CE notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

4.2 CE shall notify Business Associate 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 Business Associate's use or disclosure of Protected Health Information.

4.3 CE shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

ARTICLE 5. INDEMNIFICATION

5.1 Business Associate shall indemnify and hold harmless CE, its respective directors, officers, employees, representatives, shareholders, subsidiaries, and affiliates against any and all liabilities, losses, damages, penalties, fines, claims, demands, causes of action, proceedings and expenses (including reasonable attorneys' fees) asserted against, or suffered or incurred by CE, that result from or arise out of (i) Business Associate's negligence, recklessness or willful misconduct, (ii) Business Associate's failure to perform any of its duties or obligations under this Agreement, or (iii) Business Associate's breach of any covenant under this Agreement. Notwithstanding the foregoing, in no event will either party be liable to the other party for any incidental, special, consequential, exemplary or reliance damages arising out of this Agreement.

5.2 CE shall indemnify and hold harmless Business Associate, its respective directors, officers, employees, representatives, shareholders, subsidiaries, and affiliates against any and all liabilities, losses, damages, penalties, fines, claims, demands, causes of action, proceedings and expenses (including reasonable attorneys' fees) asserted against, or suffered or incurred by Business Associate, that result from or arise out of (i) CE's negligence, recklessness or willful misconduct, (ii) CE's failure to perform any of its duties or obligations under this Agreement, or (iii) CE's breach of any covenant under this Agreement. Notwithstanding the foregoing, in no event will either party be liable to the other party for any incidental, special, consequential, exemplary or reliance damages arising out of this Agreement.

ARTICLE 6. NOTICE OF REQUEST FOR DATA

Business Associate agrees to notify CE within five (5) business days of Business Associate's receipt of any request or subpoena for PHI. To the extent that CE decides to assume responsibility for challenging the validity of such request, Business Associate agrees to cooperate fully with CE in such challenge.

ARTICLE 7. INJUNCTIVE RELIEF

Business Associate hereby agrees that CE may suffer irreparable damage upon Business Associate's breach of this Agreement and that such damages shall be difficult to quantify. Business Associate hereby agrees that CE may file an action for injunctive relief to enforce the terms of this Agreement against Business Associate, in addition to any other remedy CE may have.

ARTICLE 8. TERM

The Term of this Agreement shall commence as of the Effective date set forth above and shall terminate when all of the PHI provided by CE to Business Associate, or created or received by Business Associate on behalf of CE, is destroyed or returned to CE.

ARTICLE 9. TERMINATION

9.1 Termination for Cause.

9.1.1 In the event of a material breach or violation of this Agreement by Business Associate, CE will afford Business Associate an opportunity to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within thirty (30) days from the date of written notification from CE describing the breach or violation, CE may terminate this Agreement and the underlying agreement between the parties as necessary to comply with federal or state laws or regulations relating to the administrative simplification provisions of HIPAA or the HITECH Act. If termination of this Agreement and the underlying

agreement between the parties is not feasible, in CE' sole discretion, Business Associate acknowledges that CE may report the breach or violation to the Secretary, notwithstanding any other provision of this Agreement or the underlying agreement to the contrary.

9.1.2 At the expense of Business Associate, CE may, in its sole discretion, cure any breach of Business Associate's obligation under this Agreement. CE shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by CE to cure Business Associate's breach.

9.1.3. CE may terminate this Agreement immediately upon written notice to Business Associate if Business Associate has breached a material term of this Agreement and cure is not possible.

9.2 Effect of Termination

9.2.1 Except as provided in Section 9.2.2, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from CE, or created or received by Business Associate on behalf of CE. This provision shall apply to PHI that is in the possession of agents, contractors or subcontractors of Business Associate. Business Associate shall retain no copies of the PHI.

9.2.2 In the event of any termination of the Agreement, Business Associate shall, at the discretion of CE, return or destroy all PHI that Business Associate still maintains in any form and shall retain no copies. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to CE notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI for so long as Business Associate maintains such PHI.

ARTICLE 10. ELECTRONIC TRANSACTIONS AND CODE SETS

To the extent that the services performed by Business Associate pursuant to the Agreement involve transactions that are subject to the regulations governing electronic transactions and code set issued pursuant to HIPAA, Business Associate shall conduct such transactions in conformance with such regulations, as amended from time to time.

ARTICLE 11. MISCELLANEOUS

11.1 Statutory and Regulatory Reference. A reference in this Agreement to a section of any statute or regulation means the section as currently in effect or amended, and for which compliance is required.

11.2 The Parties agree to take such action to amend this Agreement from time to time as is necessary for CE to comply with federal or state laws or regulations relating to the Health Insurance Portability and Accountability Act, Public Law 104-191 and the HITECH Act.

11.3 Assignment. Business Associate may not sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under this Agreement without prior written consent of CE

11.4 Survival. This Addendum will be binding upon and will inure to the benefit of the Parties to this Addendum and their respective permitted successors and assigns, subject to the transfer restrictions and expiration or termination provisions set forth in this Addendum

11.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with the Privacy Rule.

11.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

11.7 Entire Agreement; Amendment. This Agreement represents the entire understanding between Business Associate and CE and there are no other representations, warranties and agreements between Business Associate and CE relating to the subject of this agreement, which can only be modified and renewed in writing, signed by an officer of both Business Associate and CE.

IN WITNESS WHEREOF, the Parties hereby agree that this Business Associate Agreement shall be considered fully executed.

BUSINESS ASSOCIATE

Covered Entity

Medical Electronic Attachment, Inc.
3577 Parkway Lane Suite 250
Norcross GA 30092



Signature

Signature

Thomas W. Hughes

Printed Name

Printed Name

CEO

Title

Title

2/17/2010

Date

Date

Attachment A
Medical Electronic Attachment, Inc.

1. Operations/Business Functions to be performed by Business Associate:

Storage of electronic images including patient name and patient identifier