

HIPAA BUSINESS ASSOCIATE AND PRIVACY SERVICES SUBCONTRACT

TERMS AND CONDITIONS

The following HIPAA Business Associate and Privacy Services Subcontract (the "Subcontract") terms and conditions shall be incorporated into any hospital services agreement (the "Hospital Services Agreement") entered into by and between USA Medical Services Corporation, a Florida corporation ("USAMed"), and the respective Hospital ("Hospital") identified in that certain Hospital Services Agreement. By signing the Hospital Services Agreement, as may be amended, Hospital acknowledges and agrees to having read and accepted this Subcontract.

RECITALS

WHEREAS, USAMed serves as the third party administrator and may perform other functions, activities or services for or on behalf of a "Covered Entity" as that term is defined under the U.S. Department of Health and Human Services ("HHS") rule contained in 45 C.F.R. Part 160 and Part 164, Subparts A and E as hereinafter amended (the "Privacy Rule") and the rule contained in 45 C.F.R. Part 160 and Part 164, Subparts A and C as hereinafter amended (the "Security Rule"), and 45 C.F.R. Part 162 containing the Administrative Requirements, as applicable and hereinafter amended, which were promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Privacy Rule, Security Rule, and Administrative Requirements collectively referred to as "Original HIPAA"), and amended by the Health Information Technology for Economic and Clinical Health Act as part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) as hereinafter amended ("HITECH Act"), and as further amended by that certain omnibus Final Rule entitled Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules, as may be hereinafter amended ("Final Rule" and collectively with Original HIPAA, and the HITECH Act including and incorporating any future amendments thereto, "HIPAA"); and

WHEREAS, on January 25, 2013 HHS issued the Final Rule to, among other things, modify the Privacy Rule's privacy, security and enforcement rules and to implement statutory amendments under HITECH to strengthen the privacy and security protection for individuals' health information which modifications impact the obligations of business associates and Hospitals and cause the provisions of HIPAA to apply directly to USAMed and Hospital; and

WHEREAS, USAMed and Hospital have entered into an agreement in which Hospital has agreed to provide certain services to USAMed ("Subcontracted Services"); and

WHEREAS, in the course of the performance of Subcontracted Services for USAMed, Hospital and its employees, agents, advisors, consultants and producers, may be given access to or create "Protected Health Information," including "Electronic Protected Health Information," as those terms are defined under HIPAA; and

WHEREAS, USAMed and Hospital desire to protect the privacy and security of any Protected Health Information including Electronic Protected Health Information created or received by Hospital from or on behalf of USAMed when providing the Subcontracted Services, in compliance with HIPAA; and

WHEREAS, HIPAA requires USAMed to enter into a contract with Hospital to provide for the protection of the privacy and security of PHI and HIPAA prohibits the disclosure to or use of PHI by Hospital if such a contract is not in place; and

WHEREAS, Hospital agrees to be bound by HIPAA and all future amendments thereto including, without limitation, amendments to the definitions of the applicable terms, addition of new terms, removal of existing terms, and amendment of any or all provisions under HIPAA without the necessity of executing a new agreement each time HIPAA is modified or amended.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

A. Definitions. For purposes of this Subcontract:

1. "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g).
2. "Breach of Unsecured Protected Health Information" shall have the same meaning as the terms "Breach" and "Unsecured Protected Health Information" in 45 C.F.R. § 164.402.
3. "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "Electronic Protected Health Information" in 45 C.F.R. § 160.103.
4. "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 160.103.
5. "Required By Law" shall have the same meaning as the term "Required by Law" in 45 C.F.R. § 164.501.
6. "Secretary" shall mean the Secretary of HHS or a designee.
7. "Subcontracted Services" shall mean the services provided by Hospital pursuant to the Underlying Agreement(s), or if no such agreement(s) are in effect, the services Hospital performs on behalf of USAMed.
8. "Underlying Agreement(s)" shall mean the Hospital Services Agreement executed by USAMed and Hospital.
9. Terms used, but not otherwise defined, in this Subcontract shall have the same meaning as those terms in the Privacy Rule, the Security Rule, the Administrative Requirements, the HITECH Act, the Final Rule, and the regulations promulgated thereunder.

B. Permitted Uses and Disclosures of PHI. Hospital is authorized to use and disclose PHI only for the following purposes:

1. Hospital may use and disclose PHI as necessary to perform Subcontracted Services, provided that such use or disclosure would not violate HIPAA if done by USAMed.
2. Hospital may use and disclose PHI as Required by Law.
3. Hospital may use PHI for the proper management and administration of its business. Hospital may disclose PHI only for the proper management and administration of its business, provided Hospital first obtains from any recipient of such PHI a signed business associate agreement containing the provisions and assurances of this Subcontract that the PHI will remain confidential and be used or further disclosed only as permitted under HIPAA, and the person or entity agrees to notify the Hospital of any instances of which it is aware in which the confidentiality of the PHI has been breached.
4. Hospital shall use and/or disclose PHI only as permitted or required by this Subcontract, HIPAA, and as otherwise Required by Law. Hospital recognizes that HIPAA applies directly to Hospital and as such, Hospital is directly liable for impermissible uses and disclosures of PHI, failure to provide breach notification to USAMed, failure to provide access to a copy of electronic PHI to USAMed, failure to disclose PHI where required by HHS, failure to provide an accounting of disclosure, failure to comply with any other provisions of HIPAA including, without limitation, the Security Rule regarding EPHI and 45 C.F.R. §§164.308, 310, and 316 administrative, physical and technical safeguards, policies and procedures, and documentation requirements.

C. Privacy and Security Obligations. Hospital shall:

1. Recognize that HIPAA applies directly to Hospital and that if Hospital carries out its duties using another Subcontractor, Hospital must enter into a business associate agreement with its subcontractor.
2. Not use or further disclose PHI other than as permitted or required by this Subcontract, or as Required by Law. Hospital shall limit its use, disclosure, or request of PHI, to the extent practicable, to the limited data set as defined in 45 C.F.R. §164.514(e)(2), or, if additional PHI is needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, in accordance with any guidance issued by HHS pursuant to Section 13405(b) of the HITECH Act and the minimum necessary policies and procedures of USAMed.
3. Implement and maintain appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Subcontract. Hospital shall comply with all requirements of HIPAA (including, without limitation, privacy and security) that apply to covered entities.
4. Implement and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality,

integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of USAMed, as required by the Security Rule, or to prevent use or disclosure of EPHI other than as provided for by this Subcontract. Hospital shall comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 as if it were a covered entity under the Security Rule. Hospital shall also comply with all requirements of the HITECH Act related to security that apply to covered entities.

5. Report to USAMed any Breach of Unsecured Protected Health Information, as required by 45 C.F.R. § 164.410, without unreasonable delay and in no case later than ten (10) days after an employee or agent of Hospital discovers the Breach. Hospital's notice to USAMed shall include; (a) the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Hospital to have been, accessed, acquired, used or disclosed as a result of the Breach, (b) a brief description of the incident, (c) the date the Breach occurred, (d) the date the Breach was discovered, (e) the type of PHI involved, (f) steps an Individual should take to protect him/herself from potential harm resulting from the Breach, (g) a brief description of steps the Hospital has taken to investigate, mitigate losses and protect against further Breaches, and (h) contact information for Individuals to ask questions, including a toll-free number, e-mail address, website or postal address.
6. Report to USAMed any use or disclosure of PHI by Hospital not provided for by this Subcontract, or any Security Incident of which an employee of Hospital becomes aware, without reasonable delay and in no case later than ten (10) days after an employee or agent of Hospital becomes aware of such impermissible use or disclosure.
7. Take all measures requested by USAMed to mitigate any harmful effects of a use or disclosure of PHI by Hospital that is in violation of the requirements of this Subcontract.
8. Ensure that any agent or subcontractor to whom Hospital provides PHI agrees to the same restrictions and conditions that apply to USAMed with respect to such PHI, including but not limited to, the requirement that the agent or subcontractor implement reasonable and appropriate safeguards to protect EPHI.
9. Make available PHI, including any PHI maintained in an electronic health record, for inspection and copying to the Individual to the extent required by 45 C.F.R. § 164.524 and Section 13405(e) of the HITECH Act and the regulations promulgated thereunder, as follows:
 - a) Hospital shall not directly provide access to, or a copy of, PHI to an Individual.
 - b) If Hospital receives directly a request from an Individual for inspection and copying of the Individual's PHI, Hospital shall notify USAMed of the request no later than five (5) business days after Hospital's receipt of the request. In the event USAMed asks that Hospital provide to USAMed a copy of PHI in Hospital's possession in order to respond to an

Individual's request, Hospital shall provide the copy no later than twelve (12) business days after Hospital's receipt of USAMed's request.

10. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526, as follows:
 - a) Hospital shall not amend PHI pursuant to an Individual's request unless directed to do so by USAMed.
 - b) If Hospital receives a request from an Individual for amendment of the Individual's PHI, Hospital shall notify USAMed of the request no later than five (5) business days after Hospital's receipt of the request.
 - c) If USAMed instructs Hospital to amend PHI held by Hospital, Hospital shall make the amendment no later than twelve (12) business days after receipt of USAMed's instruction.
 - d) If an amendment to PHI is denied, and the Individual submits a statement of disagreement for inclusion in a record that relates to PHI held by Hospital, USAMed shall provide Hospital with a copy of the statement of disagreement, and Hospital shall file the statement of disagreement with the PHI held by the Hospital. Hospital shall not file a statement of disagreement received from an Individual unless directed to do so by USAMed.
11. Make available, as expeditiously as possible, the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528, as amended by Section 13405(c) of the HITECH Act and the regulations promulgated thereunder, as follows:
 - a) Hospital shall not directly provide an accounting of disclosures to an Individual.
 - b) If Hospital receives a request from an Individual for an accounting of disclosures of that Individual's PHI, Hospital shall notify USAMed of the request no later than five (5) business days after Hospital's receipt of the request.
 - c) In accordance with 45 C.F.R. § 164.528(b), as amended by the HITECH Act, Hospital shall keep records of all disclosures for which a covered entity must account under such section of the Privacy Rule and shall provide such records to USAMed no later than twelve (12) business days after Hospital's receipt of USAMed's request for such information.
12. Within a reasonable time (as determined by USAMed in its sole discretion) after receiving notice from USAMed, make available Hospital's internal practices, books and records relating to the use and disclosure of PHI to USAMed and, upon USAMed's request, to the Secretary for purposes of determining USAMed's compliance with HIPAA.

13. In accordance with the terms set forth in the Underlying Agreement, return or destroy all PHI received from USAMed, or created or received by Hospital on behalf of USAMed, that Hospital still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protection of this Subcontract to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
 14. Not, directly or indirectly, receive remuneration in exchange for any PHI of any Individual, except as otherwise permitted under the Privacy Rule and Section 13405(d) of the HITECH Act and with the advance written approval of USAMed.
 15. Not use or disclose PHI for Marketing, except as otherwise permitted under the Privacy Rule, Section 13406(a) of the HITECH Act, the Final Rule and with the advance written approval of USAMed.
 16. Follow the notification requirements and methods under such Beach Notification Rules if any such events implicate the Beach Notification Rules under the HITECH Act.
- D. Compliance with Standard Transactions. If Hospital conducts Standard Transactions (45 C.F.R. Part 162) with or on behalf of USAMed, Hospital will comply, and will require any Hospital or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162.
- E. Breach of Terms and Conditions; Termination; Term
1. *Breach of Terms and Conditions.* In the event that USAMed becomes aware of any actions or omissions of Hospital that constitute a material breach or violation of Hospital's obligations under this Subcontract, USAMed will notify Hospital of such breach. Hospital shall promptly cure the breach. If Hospital fails to expeditiously cure the breach in the judgment of USAMed, USAMed may terminate the Underlying Agreement and this Subcontract. USAMed will adhere to the Breach Notification Rules as regards notification to HHS. Hospital may take the same actions and afford USAMed the same cure opportunities with respect to any pattern or practice of USAMed that constitutes a material breach or violation of USAMed's obligations under this Subcontract of which Hospital has knowledge.
 2. In the event of a default or breach by Hospital as set forth in Section E(1) of this Subcontract, USAMed shall have available to it any legal or equitable right or remedy to which USAMed is entitled, including but not limited to injunctive relief.
 3. If the Underlying Agreement(s) is terminated by either party, Hospital shall return or destroy all PHI as specified in Section C(13) of this Subcontract.
 4. *Term.* This Subcontract shall be effective as of the date set forth above. This Subcontract shall terminate when all of the PHI provided by USAMed to Hospital, or created or received by Hospital on behalf of USAMed, pursuant this Subcontract, is destroyed or returned to USAMed, or, if it is infeasible to return

or destroy PHI, Hospital has taken adequate steps to ensure that protections are extended to such information in accordance with the termination provisions in Section C(13) of this Subcontract.

F. Amendment. USAMed may amend this Subcontract if it determines in good faith that such amendment is necessary or required to ensure consistency with amendments and changes in applicable federal and state laws, including regulations promulgated pursuant to HIPAA. USAMed shall provide notice to Hospital of such amendment.

G. General Provisions

1. *Indemnification*. Notwithstanding anything to the contrary in the Underlying Agreement(s), at Hospital's expense and described herein, Hospital agrees to indemnify, defend and hold harmless USAMed and its employees, directors, officers, subcontractors, or agents (the "Indemnitees"), against all damages, losses, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) and all liability to third parties arising from or in connection with any breach of this Subcontract or of any warranty hereunder or from any negligence or wrongful acts or omissions, including but not limited to failure to perform its obligations under HIPAA by Hospital or its employees, directors, officers, subcontractors, agents, or other members of Hospital's workforce. Hospital's obligation to indemnify Indemnitees shall survive the expiration or termination of this Subcontract and/or the Underlying Agreement(s) for any reason.
2. *No Waiver*. A failure of any party to enforce at any time any term, provision or condition of this Subcontract, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein. In no way whatsoever shall a waiver of any term, provision or condition of this Subcontract be valid unless in writing, signed by the waiving party and only to the extent set forth in such writing.
3. *Relationship to Underlying Agreement(s) Provisions*. In the event that a provision of this Subcontract is contrary to a provision of the Underlying Agreement(s), the provision of this Subcontract shall control. Otherwise, this Subcontract shall be construed under and in accordance with, the terms of the Underlying Agreement(s), and shall be considered an amendment of and supplement to such Underlying Agreement(s).
4. *Binding Effect*. This Subcontract shall be binding upon and shall inure to the benefit of the parties, and any successor to the operations and business of the parties whether by operation of law or otherwise, including the parties heirs, legal representatives, successors, and permitted assigns. The preceding sentence shall not affect any restriction on assignment set forth elsewhere in the Underlying Agreement(s).
5. *Notices*. Except as provided in Section G(6) of this Subcontract, all notices given pursuant to this Subcontract shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, postage pre-paid, addressed to the party for whom it is intended at its or his address as

first set forth below. Notice shall be sent to the address specified in the Underlying Agreement(s).

6. *E-Mail Notices.* Notices, requests, instructions or other communication between USAMed and Hospital under Sections C(9), C(10), C(11), C(12), C(14), C(15), E(1), or F of this Subcontract may be made by electronic mail, provided that the Underlying Agreement(s) contains an e-mail address for the purpose of communication with the appropriate party.
7. *Severability.* If any provision of this Subcontract is or becomes unenforceable, the remainder of this Subcontract shall nevertheless remain binding to the fullest extent possible, taking into consideration the purposes and spirit of this Subcontract.
8. *Survival.* Any provision of this Subcontract, which by its terms is intended to survive the termination or expiration of the Underlying Agreement(s), including but not limited to C(13) of this Subcontract, shall so survive.
9. *No Third Party Rights.* This Subcontract is intended only to regulate the relations among the parties and do not create or grant any other person any rights or benefits.
10. *Changes in Law.* References to the Privacy Rule, the Security Rule, the Administrative Requirements, the HITECH Act, the Final Rule and HIPAA mean such laws as they are now in effect or as they may be hereafter amended.
11. *Interpretation.* Any ambiguity in this Subcontract shall be interpreted and resolved to permit USAMed to comply with HIPAA.
12. *Counterparts.* This Subcontract may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date of this Subcontract at such time as all of the signatories have signed a counterpart of this Subcontract.
13. *Applicable Law and Venue.* This Subcontract shall be governed by and construed in accordance with the laws of the state of Florida (without regards to principles of conflicts of laws) and HIPAA. The parties agree that all actions or proceedings arising in connection with this Subcontract shall be tried and litigated exclusively in the state or federal (if permitted by law and party elects to file an action in federal court) courts located in Miami-Dade County, Florida. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of this Subcontract in any jurisdiction other than that specific in this Section 13. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 13. Personal jurisdiction may be served on any party anywhere.
14. *Entire Agreement.* This Subcontract constitutes the entire agreement between the parties relating to the use and disclosure of PHI. This Subcontract

supersedes and replaces any pre-existing business associate agreement between the parties.