

BUSINESS ASSOCIATE AGREEMENT

1. Definitions

- a. Business Associate. "Business Associate" shall mean MDinteractive.com, LLC, a Massachusetts limited liability company.
- b. Covered Entity. "Covered Entity" shall mean you, a medical professional/medical practice/medical group seeking to participate in the PQRS quality program or any other program under which the Business Associate performs or assists the Covered Entity with a function or activity involving the use or disclosure of individually identifiable health information;
- c. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
- d. 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.
- e. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- g. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information, including electronic Protected Health Information, other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

- e. Business Associate agrees to report to Covered Entity within sixty (60) days after discovery of any breach of unsecured Protected Health Information.
- f. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- g. Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set (as defined in 45 CFR Section 164.501), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR Part 164.524. This section shall apply only to the extent Business Associate maintains Protected Health Information in a Designated Record Set.
- h. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR Section 164.526 at the request of Covered Entity or an Individual. This section shall apply only to the extent Business Associate maintains Protected Health Information in a Designated Record Set.
- i. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- j. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.
- k. Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Provision (j) above of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Part 164.528.
- l. To the extent Business Associate is to carry out Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity.

3. Permitted Uses and Disclosures by Business Associate

a. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in License/Contract or through specific oral instruction, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

b. Specific Use and Disclosure Provisions

1. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Business Associate may use Protected Health Information for data aggregation services related to the health care operations of Covered Entity.
4. Business Associate agrees to use and disclose only the minimum Protected Health Information necessary to accomplish the intended purpose of the use or disclosure.

4. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the effective date of the Agreement and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 1. Provide a reasonable opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or take meaningful steps to cure the violation within the time specified by Covered Entity;
or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible;
- c. Termination for Cause by Business Associate. Upon Business Associate's knowledge of a material breach by Covered Entity, Business Associate may provide Covered Entity with notice of and a reasonable opportunity to cure the breach and then terminate this Agreement if Covered Entity does not cure the breach or take meaningful steps to cure within the time period specified by Business Associate. In the event that termination of this Agreement is not feasible, Covered Entity acknowledges and agrees that Business

Associate has the right to report the breach to the Secretary of the Department of Health and Human Services.

d. Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy (except to the extent infeasible) all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event the return or destruction of some or all such Protected Health Information is infeasible, Protected Health Information not returned or destroyed pursuant to this paragraph shall be used or disclosed only for those purposes that make return or destruction infeasible, and the protections set forth in this Agreement shall apply to such Protected Health Information. This section 4(d) shall survive any expiration or termination of the Agreement.

5. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is reasonable necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Governing Law. This Business Associate Agreement shall be interpreted, construed and governed according to the laws of the Commonwealth of Massachusetts.
- d. Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein, and such invalid, unenforceable or illegal provision shall be valid, enforceable and legal to the maximum extent permitted by law.