

BUSINESS ASSOCIATE AGREEMENT

This **Business Associate Agreement** (the "Agreement") is made effective _____, by and between **High Tech Innovations, LLC**, a New Jersey limited liability company (referred to herein as the "Business Associate"), with offices located at 1719 Route 10, Suite 305, Parsippany, New Jersey 07054 and _____ (referred to herein as "The Practice"), providing health care services, with offices located at _____ (Business Associate and The Practice are collectively referred to herein as the "Parties," and each individually, as a "Party.")

WITNESSETH:

WHEREAS, pursuant to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (referred to herein as the "HIPAA Privacy Rule" or "the Rule"), The Practice is a Covered Entity as defined in the Rule and, therefore, is required to comply with it; and

WHEREAS, the Parties wish to enter into or have entered into an agreement for the provision of services dated _____ (referred to herein as the "Services Agreement"), under which Business Associate will provide certain services to, or perform certain functions on behalf of, The Practice; and

WHEREAS, pursuant to the Services Agreement, Business Associate will have access to Protected Health Information ("PHI") of The Practice; and

WHEREAS, The Practice is required to obtain satisfactory assurances that Business Associate, in performing services for The Practice, will appropriately safeguard The Practice's PHI that Business Associate receives from, creates for or discloses on behalf of The Practice.

NOW, THEREFORE, in consideration of the Parties' obligations under the Services Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties enter into this Agreement, as an addendum to the Services Agreement, as required by the HIPAA Privacy Rule, and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and the mandatory provision of the HIPAA Privacy Rule, as amended, the Privacy Rule shall control. Where provisions of this Agreement differ from those in the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provisions of this Agreement shall control.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees:

- A. Not to use or disclose PHI, other than as permitted or required by the Services Agreement, this Agreement or as required by law;
- B. To use appropriate safeguards to prevent the use or disclosure of PHI, other than as permitted or required by the Services Agreement, this Agreement, or as permitted by law;
- C. To report to The Practice any security incident of which Business Associate becomes aware and any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410. The parties acknowledge and agree that this Section II.C constitutes notice by Business Associate to The Practice of the ongoing existence and occurrence or attempts of Unsuccessful Security Attempts for which no additional notice to The Practice shall be required. "Unsuccessful Security Incidents" means, without limitation, pings or other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks and any combination of the foregoing, so long as no such incident results in the unauthorized access, use or disclosure of PHI;
- D. To mitigate, to the extent practicable, harmful effects of security incidents that are known to the Business Associate;
- E. To ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information;

- F. To make available PHI in a Designated Record Set as necessary to satisfy The Practice's obligations under 45 C.F.R. § 164.524;
- G. To make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526;
- H. To make its internal practices, books and records relating to the use and disclosure of PHI received from The Practice, or created or received by Business Associate on behalf of The Practice, available to the Secretary of Health and Human Services, for the purposes of determining The Practice's compliance with the HIPAA Privacy Rule;
- I. To make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- J. To the extent that Business Associate carries out one or more of The Practice's obligations under the HIPAA Privacy Rule, to comply with the requirements of HIPAA that apply to The Practice in the performance of such obligation(s).

III. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- A. General Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform the functions, activities or services for, or on behalf of, The Practice as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule, if performed by The Practice.
- B. Specific Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate:
 - 1. May use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed, that it will remain confidential and will be used or further disclosed only as required by law, or only for the purposes for which it was disclosed to the person, and that the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI is breached; and
 - 2. May use PHI to provide Data Aggregation services relating to the health care operations of The Practice.

IV. OBLIGATIONS OF THE PRACTICE

- A. The Practice agrees:
 - 1. To notify Business Associate of any limitations(s) in its Notice of Privacy Practices, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI;
 - 2. To provide a copy of its current Notice of Privacy Practices, and any revisions to it, upon request by Business Associate;
 - 3. To notify Business Associate of any changes in or revocation by an Individual of permission to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI;
 - 4. To notify Business Associate of any restrictions on the use or disclosure of PHI to which The Practice has agreed, to the extent that such restrictions may affect Business Associate's use or disclosure of PHI; and
 - 5. When disclosing PHI to Business Associate, to limit PHI to the minimum necessary to accomplish the intended purpose of the disclosure.
- B. The Practice shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if performed by The Practice, except for such uses or disclosures by Business Associate that are otherwise permitted by this Agreement.

V. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of _____ and shall be coterminous with the term of the Services Agreement.

- B. Termination. Upon The Practice becoming aware of a breach or violation of this Agreement by Business Associate, The Practice shall:
1. Provide a reasonable opportunity (not to exceed twenty (20) days) for Business Associate to cure the breach or end the violation, or terminate this Agreement and the Services Agreement if Business Associate does not cure within the time specified by The Practice; or
 2. Immediately terminate this Agreement and the Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- C. Effect of Termination.
1. Except as provided in paragraph 2, below, upon termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI received from The Practice, or created or received by Business Associate on behalf of The Practice that Business Associate still maintains in any form and shall retain no copies of such information.
 2. Should Business Associate conclude that returning or destroying any PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, and shall limit its further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

VI. **MISCELLANEOUS**

- A. Except as expressly stated herein or in the HIPAA Privacy Rule, the Parties do not intend to create any rights in any third parties.
- B. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties, other than that of independent Parties contracting with each other solely for the purposes of implementing the provisions of this Agreement and the Services Agreement.
- C. This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. The Parties agree to take such action to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of the HIPAA Privacy Rule and any amendments or revisions thereto.
- D. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of any continuing or other liabilities or obligations, nor shall they prohibit enforcement of any liabilities or obligations on any other occasions.
- E. This Agreement shall be governed by the laws of the state of New Jersey and the New Jersey Superior Court, Morris County, shall have exclusive jurisdiction over any legal disputes between the Parties arising under this Agreement.
- F. Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

[The Practice]

HIGH TECH INNOVATIONS LLC

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Date: _____

Date: _____