

**Medical Society of Virginia Foundation
BUSINESS ASSOCIATE AGREEMENT (HIPAA)**

This MSVF Agreement (“Agreement”) is entered into on this _____ day of _____, 2015, between _____ (the “Participating Practice”) and the Medical Society of Virginia Foundation (“MSVF”) (the Participating Practice and MSVF are collectively referred to hereinafter as the “Parties,” or individually as a “Party”).

WITNESSETH:

WHEREAS, MSVF performs, or assists in performing, certain functions or activities on behalf of Participating Practice; and

WHEREAS, in conjunction with these Designated Functions, MSVF may have access to, or be provided by Participating Practice, or otherwise receive or create on behalf of Participating Practice, individually identifiable health information; and

WHEREAS, such individually identifiable health information is considered Protected Health Information (“PHI”) under the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and

WHEREAS, Participating Practice is a “Covered Entity” and MSVF is a “Business Associate,” as those terms are defined in 45 C.F.R. § 160.103 of the Standards for Privacy of Individually Identifiable Health Information (“Privacy Standards”) promulgated by the Secretary of the U.S. Department of Health and Human Services (“HHS”) under HIPAA; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions under which PHI may be used and disclosed between MSVF and Participating Practice, including disclosures by MSVF to third-parties-specifically, pharmaceutical companies.

I. EFFECTIVE DATE: The term of this Agreement shall commence on April 14, 2003 or such other date as federal law, or regulations promulgated by HHS shall set as the date upon which compliance with the Privacy Standards is required (the “Effective Date”), and shall continue until terminated as provided hereunder.

II. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

A. Except as otherwise specified herein, MSVF may use and disclose PHI, including disclose to third-parties, where necessary to perform Designated Functions on behalf of Participating Practices. All other uses or disclosures not authorized by this Agreement are prohibited including, but not limited to, uses or disclosures that would violate the Privacy Standards if done by Participating Practices.

B. MSVF may use PHI in its possession for its own proper management and administration and to fulfill any present or future legal responsibilities.

C. MSVF may disclose PHI in its possession, including disclosures to third-parties, for its own proper management and administration and to fulfill any present or future legal responsibilities if:

1. The disclosure is required by law; or
 2. MSVF receives reasonable assurance from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person.
- E. MSVF may use or disclose PHI only as permitted or required by this Agreement or as otherwise required by law.
- F. MSVF will use appropriate safeguards to maintain the security of, and prevent unauthorized use or disclosure of PHI.
- G. As soon as practicably possible after discovery of any unauthorized use or disclosure of PHI, MSVF will report any such use or disclosure to the Practice writing.
- H. MSVF will require all of its subcontractors and agents that receive or use, or have access to, PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to MSVF under this Agreement.
- I. MSVF will require its subcontractors and agents to report any disclosures of PHI made by such subcontractors or agents in order that the Practice can comply with the accounting requirement set forth at 45 C.F.R. § 164.528.
- J. Upon written request, MSVF agrees to make available to Practice any PHI needed by Practice to satisfy Practice's obligations to individuals to provide access to records in a "designated record set," as that term is defined in 45 C.F.R. § 164.501 and as required by 45 C.F.R. § 164.524.
- K. Upon written request MSVF will make available PHI to Practice for amendment and incorporate any amendments to PHI where necessary to allow Practice to address a request for amendment of a "designated record set," as that term is defined in 45 C.F.R. § 164.501 and as required by 45 C.F.R. § 164.526.
- L. Upon written request, MSVF will provide to Practice information requested by Practice to permit Practice to respond to a request by an individual for an accounting of the disclosures of the individual's PHI for purposes other than treatment, payment or health care operations, as required by 45 C.F.R. § 164.528. Under this provision, MSVF must report both its own disclosures of PHI and disclosures of PHI made by its agents or subcontractors.
- M. MSVF will make available, subject to attorney-client and other applicable legal privileges, all records, books, agreements, policies and procedures relating to the use or disclosure of PHI to the Secretary of HHS, or his designee, for purposes of determining Practice's compliance with the Privacy Standards.

III. RESPONSIBILITIES OF BUSINESS ASSOCIATE WITH RESPECT TO PROTECTED HEALTH INFORMATION

A. MSVF will, if feasible, upon the termination of this Agreement, return to Practice or destroy any PHI in its possession that was obtained from, or otherwise received or created on behalf of, Practice; provided, if it is not feasible for MSVF to return or destroy remaining PHI, MSVF agrees to extend any and all protections, limitations and restrictions contained in this Agreement to MSVF's use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the PHI infeasible.

IV. RESPONSIBILITIES OF COVERED ENTITY

A. Practice will notify MSVF, in writing and in a timely manner, of any arrangements permitted or required of Practice under the Privacy Standards that may affect the use or disclosure of PHI by MSVF under this Agreement, including, but not limited to, restrictions on use or disclosure of PHI requested by an individual and agreed to by Practice, as allowed by 45 C.F.R. § 164.522.

B. Practice will inform MSVF of any changes in, or withdrawal of, an Authorization, as defined under 45 C.F.R. §164.508, provided to Practice by individuals pursuant to the aforementioned regulations when such withdrawal is known to affect the use or disclosure of PHI in the possession of MSVF.

V. TERMINATION BY COVERED ENTITY: Practice may immediately terminate this Agreement if Practice determines that MSVF has breached a material term of this Agreement. Alternatively, Practice may choose to allow MSVF to cure the breach upon mutually agreeable terms.

VI. REPORTING IN LIEU OF CURE OR TERMINATION: If neither cure of a material breach nor termination of the Agreement is feasible, Practice will report the problem to the Secretary of HHS, or his or her designee.

VII. TERMINATION BY BUSINESS ASSOCIATE: If MSVF determines that a material condition of performance has changed under this Agreement, MSVF may provide thirty (30) days notice of its intention to terminate this Agreement.

VIII. MODIFICATIONS OR WAIVER: This Agreement may not be modified, nor shall any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

IX. NO THIRD-PARTY BENEFICIARIES: This Agreement is solely between and for the benefit of the Parties hereto. This Agreement is in no way intended to confer any rights, benefits or obligations to or on any third party.

X. CHANGE OF PRIVACY STANDARDS: In the event of any amendment or modification to the Privacy Standards, or other laws or regulations applicable to the use or disclosure of PHI, or in the event any court or governmental agency issues any interpretation which invalidates or otherwise is inconsistent with the terms of this Agreement, or that would cause any of the parties to be in violation of the law, the Parties shall exercise their good faith efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with such law, regulation or interpretation. If, after the exercise of such good faith efforts for a period of at least thirty days, the Parties have not agreed upon amendment(s) to this Agreement sufficient to resolve the inconsistency, either Party may terminate this Agreement upon notice to the other Party.

XI. GOVERNING LAW: VENUE: This relationship shall be governed by the federal law and the laws of the Commonwealth of Virginia. Exclusive venue for any dispute arising hereunder shall be resolved in the courts of Richmond, Virginia.

XII. SEVERABILITY: If any clause or provision herein shall be judged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, the validity of any other clause or provision shall not be affected and the remainder of this document between the parties shall remain in full force and effect. Each of the provisions shall be enforceable independent of any other provision and independent of any other claim or cause of action.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above:

Cort Kirkley, Chief Operating Officer
Medical Society of Virginia

Physician or Authorized Representative Signature

Name of Practice

Date