

RE: MSV and MSVIA Business Associate Agreement

The HIPAA Privacy Rule requires that specific safeguards be implemented for sharing protected health information (PHI) among different entities. A medical practice or company in possession of PHI is a covered entity under HIPAA and therefore must have a Business Associate Agreement in place prior to disclosing PHI to another entity. The Medical Society of Virginia (MSV) and MSV Insurance Agency (MSVIA) receive PHI from members and clients and therefore meet the definition of Business Associate under the HIPAA Privacy Rule.

The MSV and MSVIA serve a common constituency engaged in healthcare. To ensure that our members and clients receive equal protection under HIPAA and to minimize the administrative burden and confusion for both parties, we employ a joint Business Associate Agreement. By signing the joint MSV/MSVIA Business Associate Agreement, you can be assured that each MSV organization with which you conduct business is equally compliant and engaged in the privacy obligations set forth in HIPAA.

MSV requests your cooperation in reviewing and signing the attached MSV Business Associate Agreement to ensure that both parties are compliant with HIPAA regulations. The agreement includes a digital signature from an authorized MSV representative. Please have an authorized officer sign the agreement and keep the original for your records. Also, please return an executed copy to MSV by fax or mail to the following:

Medical Society of Virginia
2924 Emerywood Parkway, Ste 300
Richmond, VA 23294
Fax: 804-355-6189

For more information concerning the Business Associate Agreement, please e-mail privacy@msv.org.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "BAA") is entered into effective this _____ day of _____ (Day) _____ (Month) _____ (the "Effective Date"), between _____ (Please print) _____ (the "Covered Entity") and Business Associate (as defined below) (the Covered Entity and the Business Associate are collectively referred to hereinafter as the "Parties," or individually as a "Party").

WITNESSETH:

WHEREAS, the Covered Entity and the Business Associate are parties to, or anticipate becoming parties to one or more agreements (the "Primary Agreement(s)") whereby Business Associate provides or expects to provide certain items and/or services (the "Designated Functions") and pursuant to which the Business Associate may receive, create, disclose and/or use Protected Health Information (as defined below) in its performance of the Designated Functions; and

WHEREAS, the Parties desire to enter into this BAA to comply with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Standards") and the Security Standards promulgated by the Secretary of the U.S. Department of Health and Human Services ("HHS") under the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

NOW, THEREFORE, in consideration of these premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS: The following terms shall have the meanings set forth below as used in this BAA:

1.1 *Administrative Safeguards* shall have the meaning as set forth in 45 C.F.R. § 164.304, as amended from time to time.

1.2 *Data Aggregation* means, with respect to Protected Health Information created or received by Business Associate in its capacity as a business associate (as defined under 45 C.F.R. § 160.103, as amended from time to time) of Covered Entity, the combining of such Protected Health Information by the Business Associate with the Protected Health Information received by the Business Associate in its capacity as a business associate of another covered entity (as defined under 45 C.F.R. § 160.103, as amended from time to time), to permit data analyses that relate to the health care operations (as defined under 45 C.F.R. § 164.501, as amended from time to time) of the respective covered entities.

1.3 *Physical Safeguards* shall have the meaning as set forth in 45 C.F.R. § 164.304, as amended from time to time.

1.4 *Protected Health Information* shall mean and include health information, including demographic information collected from an individual, which (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (ii) 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 health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and such additional

information as may be considered Protected Health Information pursuant to 45 C.F.R. § 164.501, as amended from time to time; provided, however, for purposes of this BAA, Protected Health Information shall only include Protected Health Information obtained or created by Business Associate pursuant to the Primary Agreement(s).

1.5 *Security Incident* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and any other event identified as a Security Incident pursuant to 45 C.F.R. § 164.304.

1.6 *Technical Safeguards* shall have the meaning as set forth in 45 C.F.R. § 164.304, as amended from time to time.

2. PROTECTED HEALTH INFORMATION

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate may (i) use and disclose Protected Health Information as necessary to perform the Designated Functions under the Primary Agreement(s), subject to the restrictions below, (ii) use and disclose Protected Health Information as required by law and as specifically permitted herein, and (iii) use Protected Health Information for the Business Associate's proper management and administrative services. In addition, with regard to its use, maintenance, transmission and/or disclosure of Protected Health Information, the Business Associate hereby agrees to do the following:

- a. Not use or disclose any Protected Health Information other than as permitted or required under this BAA or as required by law;
- b. Use appropriate safeguards to prevent use or disclosure of the Protected Health Information except use or disclosure permitted pursuant to this BAA;
- c. Report to the Covered Entity any use or disclosure of the Protected Health Information not provided for under this BAA of which the Business Associate becomes aware, including any Breach (as defined in 45 C.F.R. § 164.402) of unsecured Protected Health Information as required by law;
- d. Comply with the applicable requirements of Subpart C of 45 C.F.R. Part 164;
- e. Require that any subcontractors of Business Associate that create, receive, maintain or transmit Protected Health Information on behalf of the Business Associate agree to substantially the same restrictions and conditions that apply to the Business Associate with respect to such information to the extent required by law;
- f. Make available Protected Health Information to the extent required under 45 CFR § 164.524;
- g. Make available Protected Health Information for amendment and incorporate any amendments into the Protected Health Information maintained by the Business Associate to the extent required under 45 CFR § 164.526;
- h. Make available the information necessary to provide an accounting of disclosures to the extent required under 45 CFR § 164.528;
- i. To the extent that Business Associate is to carry out Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of such subpart that apply to the Covered Entity in the performance of such obligations;

- j. Make available its internal practices, books and records relating to the use and disclosure of Protected Health Information received from or created or received by the Business Associate on behalf of the Covered Entity to the Secretary of Health and Human Services for determining compliance with applicable regulations; and
- k. Comply with such further laws as are applicable to business associates (as defined under 45 C.F.R. § 160.103, as amended from time to time), all of which are deemed included in this BAA.

2.2 Security Standards. Business Associate hereby agrees to do the following:

- a. implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity as required by 45 C.F.R. Part 164;
- b. ensure that any subcontractor to whom Business Associate provides Protected Health Information agrees to implement reasonable and appropriate safeguards as set forth above to protect the Protected Health Information; and
- c. report to the Covered Entity any Security Incident of which Business Associate becomes aware, provided however, that the parties acknowledge and agree that this Section constitutes Business Associate's report of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional report or notice shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on a party's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic Protected Health Information.

2.3 Treatment of Protected Health Information following Termination. Upon termination of this BAA, Business Associate shall, if agreed by the parties to be feasible, return or destroy all Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible extend the protections of this BAA to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

2.4 Covered Entity Obligations. Covered Entity agrees to notify Business Associate, in writing, of any restrictions on uses and disclosures of PHI to which Covered Entity agrees that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this BAA. Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this BAA. Covered Entity agrees to notify Business Associate of any changes in its Notice of Privacy Practices that will impact in any manner the use and/or disclosure of PHI by Business Associate under this BAA. Covered Entity shall comply with all obligations of Covered Entity under HIPAA, including, without limitation, the minimum necessary standards, and shall not request that Business Associate use, disclose, maintain or transmit Protected Health Information in any manner that would violate HIPAA and/or associated regulations.

3. TERMS AND TERMINATION

3.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 3. In addition, certain provisions and requirements of this BAA shall survive its expiration or other termination in accordance with Section 2.3 herein.

3.2 Termination Due to Breach. In the event that either Party commits a material breach of this BAA, the non-breaching Party may terminate this BAA upon notice to the other Party.

3.3 Automatic Termination. This BAA will automatically terminate without any further action of the Parties upon the termination or expiration of the Primary Agreement(s).

4. MISCELLANEOUS

4.1 Business Associate. For purposes of this BAA, the term Business Associate shall include The Medical Society of Virginia ("MSV") and/or MSV Services Corporation ("MSVIA"), but only to the extent that an individual corporate entity maintains a Primary Agreement(s) with Covered Entity. Notwithstanding the foregoing, Covered Entity acknowledges and agrees that nothing herein shall be interpreted to subject any entity to liability in connection with the Primary Agreement(s) or pursuant to this BAA other than such Business Associate which is a party to the relevant Primary Agreement(s). For example, and not by way of limitation, if the Primary Agreement(s) is/are between Covered Entity and MSVIA only, the term "Business Associate" would include only MSVIA, and MSV would not be subject to any liability in connection with this BAA and/or the Primary Agreement(s). Further, Covered Entity acknowledges and agrees that MSV and MSVIA are separate legal entities and in no event shall either such entity be liable for the acts or omissions of the other entity.

4.2 Amendments: Waiver. This BAA may not be modified, nor shall any provision hereof 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. Notwithstanding anything herein to the contrary, in the event that HIPAA, the Security Standards, the Privacy Standards and/or any other regulations applicable thereto are amended, Business Associate agrees that this BAA shall be deemed to have been amended as necessary to comply with the requirements of law. This BAA supersedes any prior terms agreed to by the Parties relating to HIPAA or the subject matter hereof.

4.3 No Third Party Beneficiaries. Nothing expressed or limited in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

4.4 Notices. Any notices to be given hereunder to a Party shall be in writing and shall be deemed given if delivered personally, forwarded via U.S. Mail (certified with return receipt requested) or by recognized national overnight courier express carrier to the following address, in the case of notice to Business Associate, or to the address set forth below Covered Entity's signature, in the case of notice to Covered Entity:

If to Business Associate, to:
Medical Society of Virginia
2924 Emerywood Pkwy.
Richmond, VA 23294
Attention: Privacy Officer

Each party named above may change its address and that of its representative for notice by giving of notice thereof in the manner hereinabove provided.

4.5 Counterparts; Facsimiles. This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Signatures to this BAA transmitted by fax, by electronic mail in "portable document format" (".pdf") or jpeg format, or by any other electronic means intended to preserve the original graphic and pictorial appearance, shall have the same effect as physical delivery of the paper document bearing the original signature. A telecopy, facsimile, scanned copy (pdf or jpeg) or other similar reproduction of a signature of this BAA shall have the same effect as an original for all purposes.

4.6 Governing Law. This BAA and the Primary Agreement(s) shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding Virginia's conflict of law doctrine.

IN WITNESS WHEREOF, each of the undersigned parties have caused this BAA to be duly executed in their respective names and on their behalf effective as of the date first set forth above.

By: _____
(Authorized officer)

Title: _____

Address: _____

BUSINESS ASSOCIATE:

By: 

Title: Vice President of Finance