

PROVIDER PORTAL AGREEMENT

This Provider Portal Agreement ("Agreement") is entered into by and between HS1 Medical Management, Inc. ("HS1", "We", "Us", or "Our") and the Provider ("Provider", "You", or "Your" means a medical provider or medical provider group that provides medical goods and services to an individual) named herein, a "Covered Entity" as defined in 45 CFR §160.103. HS1 and You are sometimes hereinafter referred to individually as the "Party" or collectively as the "Parties".

This Agreement governs Your use of HS1's secure web sites ("Site") including, without limitation, all content such as eligibility, claims payments and authorizations, and self-service functions ("Services") made available to You through the Site. This Agreement include the Terms and Conditions set forth below.

TERMS AND CONDITIONS

1. Definitions.

A. Administrator is the person identified herein who has legal authority to sign agreements for Provider and who is responsible for setting up and maintaining Users. The Administrator may, from time to time and in the manner prescribed by HS1, designate another person to setup and maintain Users, but the Administrator shall retain overall responsibility for setting up and maintaining Users.

B. A User is a person who has registered to use the Site and that You have authorized to access or use the Services.

2. Services. The Services include the exchange of transactions through web direct data entry, web upload, secure FTP and the use of specific tools.

3. Use. Your access to and use of the Services are permitted solely for Your internal use and benefit to obtain information and/or submit transactions to health plans for medical services You provided; any other access or use is strictly prohibited.

4. User Access. You must register each User through the online registration process or other process established by HS1, which process may change from time to time in HS1's sole and absolute discretion. In addition, each User is bound by the terms and conditions of this Agreement and You represent and warrant that You have secured such agreement for each User. A User must execute agreements ("User Agreements") before receiving access to the Services. Such User Agreements are accessed and acknowledged online by each User upon initial login and establish the Terms of Use and Confidentiality provisions for access to the Site and use of the Services. No User shall receive access to the Site without first accepting the User Agreements. The Administrator may disable access to the Services by a User at any time by revoking the User's access online or by a written request to Us. You must immediately disable or request that we disable access to the Services by a User when You have security concerns, including but not limited to lost or stolen User ID or Password, disclosure of confidential information, or fraudulent activity. In addition, you must immediately disable access by any terminated employee. If We at any time discover any error or omission in the information provided to Us, We may, in Our sole and absolute discretion, terminate Provider's or any User's right to access and use the Site and the Services. Provider shall not use HS1's Site in a manner which may violate the laws and regulations of the United States or any other

nation, or the laws and regulations of any state, city, province, or other jurisdiction in any fashion and shall not transmit any information using the Site unless it has proper consent from the subject of such information to so transfer the information. HS1 may deny Your access to the Site in the event You breach this Agreement or at any time with or without cause. You are responsible for all acts or omissions by Users, and for any liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims, or demands of any kind or nature by or on behalf of any person, party, or governmental authority incurred by Us as a result of any User's use of the Site.

5. **Confidential Information via the Site.** Health plans and/or affiliated parties of HS1 contracted with health plans and other health care intermediaries (collectively, "Intermediaries"), may make certain claims and other medical information ("Patient Health Information") available to You through Services via the Site for the purpose of You providing treatment (as defined by the Health Insurance Portability and Accountability Act) to Your patients who are the subject of such Patient Health Information (the "Treatment Only Use"). The Patient Health Information is provided to You only as a secondary source of information and You acknowledge that because such information is coming only from certain sources and that certain information may not be provided (including, without limitation, because it may be particularly sensitive information), the Patient Health Information that may be provided to You is not intended to be and will not be complete. In addition, You acknowledge that such information may contain errors and agree that, before using any such information, You will verify its accuracy. You agree that You will access and use such Patient Health Information solely for the Treatment Only Use. You further acknowledge and agree that (i) HS1 is only acting as a connector between You and the providers of such information and that HS1 is not responsible for the content of the Patient Health Information, (ii) You will abide by any additional requirements of which You are notified and accept while on the Site with respect to such Patient Health Information, (iii) You will maintain the strict confidentiality of the Patient Health Information and will maintain the security of the Patient Health Information and otherwise treat the Patient Health Information in accordance with all requirements of federal, state and local laws, rules and regulations, and (iv) You will hold Us, health plans and/or affiliated parties of HS1 contracted with health plans and any other Intermediaries harmless from, and indemnify and defend Us, health plans and/or affiliated parties of HS1 contracted with health plans and such other Intermediaries against, any and all losses, damages, claims, expenses, and costs incurred, as a result of Your use of the Patient Health Information or breach of this Section 4. Health plans and/or affiliated parties of HS1 contracted with health plans and Intermediaries that provides Patient Health Information are intended third party beneficiaries, and shall have the right to enforce the terms of this Section 4.

6. **Business Associate Provisions.** The Parties agrees as follow: (1) Both Parties agree that the Business Associate Provisions (attached hereto as Exhibit A), which are hereby incorporated by reference into this Agreement, and which may be updated from time to time, will govern the rights and responsibilities of You and Us with respect to the communication and treatment of Protected Health Information ("PHI"), as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA"); (2) Both Parties agree that each Party will use or disclose PHI only in a manner consistent with all applicable laws and regulations, including HIPAA; (3) You represent and warrant to us that You have provided or will provide to patients all notices, and that You have obtained or will obtain from patients all consents and authorizations, required by HIPAA and other applicable laws in connection with Your use of the Service; (4) Both Parties agree to keep confidential all proprietary or

confidential information of the other Party, and of all affiliates of and vendors, suppliers, licensors and service providers to the other Party (all such affiliates, vendors, suppliers, licensors and service providers, collectively, "Related Entities"), that either Party may receive or to which the other Party may have access ("Confidential Information") and that each Party will use Confidential Information only for the specific purpose of using the Service as contemplated in this Agreement; and (5) Both Parties agree to allow the other Party, upon at least thirty (30) days prior written notice to the other Party and in a manner that will not unreasonably disrupt the office or practice of the other Party, to access, inspect and audit the other Party's records relating to the Service and either Party's compliance with this Agreement. Both Parties agree that in the event any legislation or rules promulgated under HIPAA or any other federal or state governing statutes or regulatory action after the effective date of this Agreement, which modifies in any way the use, disclosure, or exchange of PHI, shall be deemed accepted upon the effective date and this Agreement shall be automatically updated to include such changes as of their effective date without requiring further amendment to this Agreement.

7. **Changes to the Site and Services.** We may make changes to the Site and Services, the terms and conditions in this Agreement, or any other policies and conditions that govern the use of the Site and Services at any time. Provider should review the Site and Services and these terms and conditions for any updates or changes. Provider's access or use of the Site and Services shall be deemed Provider's notification and acceptance of these changes.

8. **Security.** We require each User to have unique information to identify himself/herself when accessing or using the Services. Currently this unique information is a User ID and Password and later may be a digital certificate. You are solely responsible for (1) maintaining the strict confidentiality of the IDs and Passwords assigned to You and Your Users, (2) instructing Your Users to not allow another person to use their IDs or Passwords to access the Site or the Services, and (3) any charges, damages, or losses that may be incurred or suffered as a result of Your or Your Users' failure to maintain the strict confidentiality of their IDs and/or Passwords. If Provider becomes aware of or suspects fraudulent activity or any other activity that threatens the security of the Site, Provider must immediately revoke the offending User's access to the site and promptly report the activity to HS1.

9. **Abusive or Excessive Use.** You agree not to submit transactions in a manner that We, in our sole discretion, deem to be excessive or abusive usage. We will monitor Your usage on a monthly basis and We will notify You if such usage issues are identified. Parties agree to work in good faith to remediate any such issues. To the extent the issue is not resolved within ten (10) days of Our notice to You, We may utilize technical measures to prevent such usage and may suspend or terminate the connection if We determine, in Our sole discretion, that Your use is abusive or excessive. If We do not suspend or terminate the connection, We reserve the right to charge You a fee on a per transaction basis.

10. **Third Party Access and Scraping.** You agree not to provide any third party access to the Site. In addition, You agree that You will not use technology or methods commonly referred to as “screen scraping,” “data scraping,” “web scraping,” “web emulation,” or “web bots” (collectively the “Scraping Methods”) when accessing or using the Site, including but not limited to, when You submit medical transactions. In the event that You use any of the Scraping Methods, We may utilize technical measures to prevent such usage and may, in our sole discretion, suspend or terminate the connection or charge You \$0.10 per transaction.

11. **Intellectual Property Ownership.** You agree that We (or third parties providing content or services for the Site) own all worldwide rights, titles and interests in and to the Site and all intellectual property rights therein. You may print a copy of the information contained on the Site for Your professional use only, but You may not reproduce or distribute the text or graphics to others or substantially copy the information on Your own server, or link to the Site, without prior written permission of HS1. All rights not expressly granted in this Agreement are reserved to Us. No other rights or licenses are conveyed or intended by this Agreement.

12. **General Disclaimers.** THE SITE AND THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS, WITH ALL FAULTS" BASIS, AND YOUR USE THEREOF IS AT YOUR OWN RISK. IN NO EVENT WILL HS1 BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THE SITE, OR ANY OTHER HYPER-LINKED WEB SITE. THIS INCLUDES, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR DATA ON YOUR EQUIPMENT, OR OTHER DAMAGES OF ANY NATURE, EVEN IF HS1 IS EXPRESSLY ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. ANY OBLIGATIONS UNDER THE BUSINESS ASSOCIATE AGREEMENT PREEMPTS ANY GENERAL DISCLAIMERS IN THIS AGREEMENT.

13. **General Indemnity.** You agree to defend, indemnify, and hold Us harmless against any losses, expenses, costs, or damages (including Our reasonable attorneys' fees, expert fees, and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to (1) as outlined in Section 4, (2) Your breach of the terms of this Agreement, (3) Your unauthorized or unlawful use of the Site or the Services, (4) the unauthorized or unlawful use of the Site or the Services by any other person using Your IDs or Passwords, and (5) any breach or unauthorized use of this Site or the Services of any person or entity that You delegate functions or User access to with regard to this Site or the Services.

14. **Waiver.** It is understood and agreed that no failure or delay by a Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

15. **Miscellaneous.** HS1 reserves the right to access, read, copy, delete, and disclose information on HS1 systems and equipment. HS1 the right to inspect any and all files stored on HS1 equipment. If any portion of this Agreement is judged invalid or unenforceable by a court of competent jurisdiction, the remaining portions will remain valid, enforceable, and in effect, and the parties will promptly substitute for the invalid provision an enforceable provision which resembles the invalid provision as closely as possible in intent and economic effect. No joint venture, partnership, employment, or agency relationship exists between Provider and HS1 as a result of this Agreement or your use of the portal. This Agreement constitutes the entire agreement between Provider and HS1 with respect to your use of this Site and

Services and/or provision of Patient Health Information, and supersedes any and all prior understandings or agreements between Provider and HS1, whether written or oral. You acknowledge that, in providing you access to and use of this Site and Services, we have relied on your acceptance of this Agreement.

16. **Third Party Software.** You agree to use any third-party software HS1 may provide to You solely for the purposes of using the Site to transmit transactions to health plans. You agree to comply with all of the terms and conditions of any licenses relating to such third-party software. HS1 may, but shall have no obligation to assist in the installation of such software. You agree not to, or to attempt to, reverse engineer disassemble, copy, modify, decompile, or prepare derivative works of any part of HS1's system or any such third-party software. Upon HS1's request, You shall return all copies of such third-party software to HS1 and remove, and certify to HS1 such removal, of any electronic copies of such third-party software stored or residing on Your systems.

17. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Florida, without regard to its conflicts of laws provisions. Any dispute relating to this Agreement, the Site, or the Services shall be brought only in a federal or state court sitting in Broward County, Florida.

18. **Electronic Remittance Advice.** By execution of this Agreement, I authorize HS1 to receive and process on behalf of Provider, any and all Electronic Remittance Advice transactions which are returned to HS1 from participating health plans.

EXHIBIT A

BUSINESS ASSOCIATE PROVISIONS

This Exhibit sets forth the terms and conditions under which You and/or Us (individually or collectively, as applicable, "Business Associate") will use, disclose and safeguard information provided by You and/or Us (individually or collectively, as applicable, "Covered Entity") that is deemed to be protected health information ("the PHI") or electronic protected health information ("the Electronic PHI") under federal or state law, including but not limited to the regulations promulgated pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the implementing regulations, as amended from time to time, including by certain provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA") referred to individually as the "HIPAA Privacy Regulations", and the "HIPAA Security Regulations" and, collectively, as the "HIPAA Regulations".

AGREEMENT

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

- 1.1 "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. §160.103, and in reference to the party to this Agreement, shall mean You and/or Us.
- 1.2 "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. §160.103, and in reference to the parties to this Agreement, shall mean You and/or Us.
- 1.3 "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- 1.4 "Electronic PHI" means PHI transmitted by or maintained in electronic media.

- 1.5 "HIPAA Rules" means the Privacy, Security, Breach Notification, Transactions, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 1.6 "HITECH Act" shall mean the Health Information Technology for Economic Clinical Health Act, Title VIII of Division A and Title VI of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L.111-5).
- 1.7 "Parties" shall mean HS1 and Provider. (HS1 and Provider, individually, may be referred to as a "Party".)
- 1.8 "Customer Agreement" shall mean the Customer Agreement between HS1/HS1 affiliate and Provider and other separate agreement(s) between the parties in which either party performs functions or activities on behalf of the other.
- 1.9 Other definitions: The following terms used in this Agreement shall have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Data Aggregation, Disclosure, HealthCare Operations, Individual, Minimum Necessary, Limited Data Set, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Standard, Subcontractor, Transaction, Unsecured Protected Health Information, and Use. Other terms shall have the definitions set for in this Agreement.

ARTICLE 2

CONFIDENTIALITY

- 2.1 Obligations and Activities of Parties. HS1 and Provider both agree as follows:
- (a) not to use or further disclose PHI other than as permitted or required by this Agreement, in accordance with the Minimum Necessary rules, or as Required By Law;
 - (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted by this Agreement, the Customer Agreement, and the HIPAA Rules, and to comply with Subpart C of 45 C.F.R. part 164 with respect to Electronic PHI;
 - (c) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity;
 - (d) to report to Covered Entity within a reasonable time and in writing any suspected or actual breach of security, intrusion or unauthorized use, or disclosure of Unsecured PHI of which Business Associate becomes aware. Business Associate shall take (i) prompt corrective action to cure any such deficiencies; and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. For reports of incidents constituting a Breach, the report shall include, to the extent available, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during a Breach of Unsecured Protected Health Information;
 - (e) to report to Covered Entity in writing any of the following Security Incidents of which Business Associate becomes aware or upon Covered Entity's request: (A) unauthorized access, use, disclosure, modification, or destruction of Business Associate's Electronic PHI, or (B)

unauthorized interference with system operations in Business Associate's information systems that contain or provide access to Covered Entity's Electronic PHI

(f) to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement;

(g) in accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;

(h) at the request of Covered Entity and in the time and manner reasonably designated by Covered Entity, furnish access to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Business Associate will not be required to furnish access to PHI that is maintained in more than one Designated Record Set or at more than one location, as provided in 45 CFR §164.524(c)(1);

(i) to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity;

(j) subject to Business Associate's reasonable confidentiality and security practices, to make internal practices, books, and records relating to the use and disclosure of PHI available to Covered Entity or, at the request of Covered Entity, to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule;

(k) to document such disclosures of PHI 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 PHI in accordance with 45 CFR §164.528;

(l) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(k) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;

(m) if and only to the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 C.F.R. part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);

2.2 Specific Use and Disclosure Provisions.

(a) Except as otherwise limited in this Agreement, Business Associate may use PHI only (i) in accordance with the Business Associate Agreement, (ii) for the proper management and administration of Business Associate; (iii) to carry out Business Associate's legal responsibilities; or (iv) as otherwise permitted by this Agreement

(b) Except as otherwise limited in this Agreement, Business Associate may only disclose PHI for the purposes set forth in (a) above (i) as Required By Law, or (ii) provided that Business

Associate has first obtained (A) reasonable assurances from the person to whom the information is disclosed that the PHI 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 (B) reasonable assurances from the person to whom the information is disclosed that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Business Associate may create de-identified information that may be used and disclosed by Business Associate as Business Associate deems appropriate, provided that the information is de-identified in accordance with the HIPAA Rules.

(d) Business Associate may use PHI to provide Data Aggregation services to Covered Entity. Business Associate may also use PHI to create, use and disclose a Limited Data Set consistent with the HIPAA Rules.

2.3 Further Obligations of the Parties:

(a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(d) Covered Entity shall comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Covered Entity agrees to ensure that any patient authorizations or consents that may be required under state or federal law or regulation have been obtained in order to transmit PHI to Business Associate and to enable Business Associate and its subcontractors to use and disclose PHI as contemplated by this Agreement and the Business Associate Agreement.

2.4 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

ARTICLE 3

EXCHANGE OF STANDARD TRANSMISSIONS

3.1 Obligations of the Parties. Each of the Parties agrees that it will not enter into a trading partner agreement that affects the Transactions Rule's implementation specifications by:

(a) changing the definition, data condition, or use of a data element or segment.

(b) adding any data elements or segments to the maximum defined data set.

(c) using any code or data elements that are either marked "not used" or are not contained in the implementation specifications.

- (d) changing the meaning or intent of any of the implementation specifications.
- 3.2 Additional Specifications. Business Associate shall, from time to time, inform Covered Entity of acceptable formats in which to transmit data. Covered Entity shall only transmit data in such formats and in accordance with the Business Associate Electronic Data Interchange Guidelines, as applicable.
- 3.3 Backup. Covered Entity shall maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary.
- 3.4 Incorporation of Modifications to HHS Transaction Standards. Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the Transactions Rule. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

ARTICLE 4

MISCELLANEOUS

- 4.1 Indemnification. Each Party agrees to indemnify the other for any damages, costs, expenses or liabilities, including reasonable legal fees and costs, incurred in connection with third-party claims arising from or related to a breach of such Party's obligations hereunder.
- 4.2 Term and Termination.
- (a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI 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 PHI, protections are extended to such information, in accordance with the termination provisions in this Section
- (b) Termination for Cause. Upon a material breach by either Party of its obligation hereunder, the other Party may terminate this Agreement and the Customer Agreement in accordance with the terms of the Business Associate Agreement applicable to terminations for cause.
- (c) Effect of Termination.
- (i) Except as provided in paragraph 4.2(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, Business Associate shall:
- a. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - b. Return to Covered Entity or destroy the remaining PHI that Business Associate still maintains in any form;
 - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure

of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

d. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Agreement which applied prior to termination; and

e. Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- 4.3 Regulatory References. A reference in this Agreement to a section of the HIPAA Rules means the section as in effect or as amended.
- 4.4 Survival. The respective rights and obligations of the Parties under Sections 4.1 and 4.2(c) of this Agreement shall survive the termination of this Agreement.
- 4.5 Limitation of Damages. Other than liabilities under Section 4.1, neither Party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any breach of this agreement, or any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.
- 4.6 No Third Party Beneficiaries. Nothing in this Agreement will create any right in any third party as against Covered Entity or Business Associate or be construed for the benefit of any third party.
- 4.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the HIPAA Rules. This Agreement supersedes any and all prior representations, understandings, or agreements, written or oral, concerning the subject matter herein, including conflicting provisions in the Business Associate Agreement.
- 4.8 Amendment. The Parties agree that this Agreement will be amended automatically to conform to any changes in the HIPAA Rules as are necessary for each of them to comply with the current requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law, the Parties shall negotiate in good faith to amend the terms of this Agreement within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Business Associate Agreement upon ten (10) days written notice to the other Party. Except as provided above, this Agreement may be amended or modified only in a writing signed by the Parties.
- 4.9 Other Terms. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160, 162 and 164. Any reference to a regulation or section in the Code of Federal Regulations ("CFR") shall include any corresponding or amended regulation issued subsequently regardless of the date of issue.