

This **Business Associate Agreement** (the "Agreement") is made and entered into as of \_\_\_\_\_, 2019 ("Effective Date"), by and between **SOFTech INC**, a company with a place of business at 28104 Orchard Lake Road, Farmington Hills, MI 48334 (the "Associate"), and \_\_\_\_\_, a Health Care Provider ("Provider") with place of business at \_\_\_\_\_.

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## I. Definitions

- A.** "Associate" means the Business Associate and shall have the same meaning given to such term in the HIPAA Regulations.
- B.** "Provider" means the Covered Entity and shall have the same meaning given to such term in the HIPAA Regulations.
- C.** "Agreement" means the Business Associate Agreement and shall have the same meaning given to such term in the HIPAA Regulations.
- D.** "PHI" means Protected Health Information limited to the specific medical or billing information that the Associate receives from, or creates on behalf of Provider as Provider's Associate, either in paper or electronic form.
- E.** "HITECH Act" means the "Health Information Technology for Economic and Clinical Health Act".

## II. Obligations of Associate

- A.** Associate agrees to comply with those provisions of the HITECH Act that relate to security of PHI. Associate shall not use or disclose PHI other than as permitted in the course of providing services to Provider, or as required by law.
- B.** Associate shall take reasonable and appropriate safeguards to reasonably protect the confidentiality of PHI and use appropriate safeguards to prevent its disclosure to others.
- C.** Associate shall use reasonable commercial efforts to mitigate any harmful effect known to Associate of a use or disclosure of PHI by Associate in violation of this Agreement.
- D.** Associate shall report to Provider if it becomes aware of any use or disclosure of PHI not provided for by this Agreement.
- E.** Associate agrees to ensure that any agents and subcontractors to whom Associate provides PHI agree to the same conditions restrictions and restrictions that apply through this Agreement to Associate and that such agents and subcontractors implement reasonable and appropriate safeguards with respect to PHI.
- F.** Associate shall document disclosures of PHI and information related to such disclosures to respond to a request by a Provider for an accounting of disclosures of PHI and provide this accounting to Provider within 40 days of receiving a written request from Provider, at the address specified by Provider in the request. Associate may charge the Provider a reasonable and customary fee for providing this service.

## III. Use and Disclosure Provisions

- A.** Provider shall not request that Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Provider, except that Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the commercial agreement(s) between Associate and Provider for which Associate is providing services to Provider, including, but not limited to:
- 1.** Associate may use PHI to provide data processing services as relating to the health care operations of Provider, or aggregating data with other practices for the purpose of conducting data analyses that relate to health care operations of various practices.
  - 2.** Associate may use PHI for the proper management and administration of the Associate or to carry out the legal responsibilities of the Associate.
  - 3.** Associate may disclose PHI for the proper and normal business use of the Associate, provided that the Associate obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and be 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 Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.
  - 4.** Associate may use PHI to create unidentified, or de-identified, health information to the extent permitted by the Privacy Rule. There will be no restrictions on Associate's use or disclosure of the unidentified health information once it is so de-identified.

## IV. Obligations of Provider

- A.** Provider represents and warrants to Associate that Provider shall comply with all requirements of the Privacy of Individually Identifiable Health Information, at 45 Code of Federal Regulations ("CFR") part 160 and part 164 subpart E (the "Privacy Rule"), the Security Standards issued at 45 CFR part 160 and part 164 subpart C (the "Security Rule").
- B.** Provider represents and warrants to Associate that its Notice of Privacy Practices permits Provider to disclose PHI to Associate, and that the Notice of Privacy Practices used by Provider incorporates the terms and statements required by the Privacy Rule. Provider agrees that Provider shall not modify such notice or its privacy procedures in any manner that may affect Associate's authority to use or disclose PHI pursuant to this Agreement without the consent of Associate, except as may be required by applicable law.
- C.** Provider shall notify Associate of any changes in, or revocation of, permission by a Patient, or other third party, to use or disclose PHI, to the extent that such changes may affect the permitted uses or disclosures of such PHI by Associate.
- D.** Provider shall not request that Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule, Security Rule or other applicable law.

**V. Term of Agreement**

- A.** The Term of this Agreement shall be effective as of the date set forth above, and shall remain effective so long as the commercial business relationship between the Provider and the Associate shall persist.
- B.** Upon Provider’s knowledge of a material breach of this Agreement by Associate, Provider shall provide written notice to Associate identifying the breach, and permit the Associate 30 days to cure the breach; if Associate does not cure the breach or end the violation within the time specified, or if cure is not possible, Provider may immediately terminate this Agreement.
- C.** Upon Associate’s knowledge of a material breach of this Agreement by the Provider, the Associate shall provide written notice to the Provider identifying the breach, and may permit the Provider the opportunity to cure the breach within 30 days; if Provider does not cure the breach or end the violation within the time specified, or if cure is not possible, Associate may immediately terminate this Agreement.
- D.** Upon termination of this Agreement, for any reason, Associate shall return or destroy all PHI received from Provider, or created by Business Associate on behalf of Provider. This provision shall apply to PHI that is in the possession of subcontractors or agents of Associate. Associate shall not copies of the PHI.

**VI. Additional Terms**

- A.** If the HIPAA Regulations are materially amended, the parties agree to amend this Agreement solely as needed for the parties to comply with the HIPAA Regulations.
- B.** This Agreement is between Provider and Associate and shall not be construed or interpreted to confer any rights whatsoever on to any third party, including Patients.
- C.** This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan, without regard to the conflicts of law principles of such state. Any litigation or discovery concerning this Agreement shall be conducted in the state of Michigan.
- D.** By their signature below, the parties acknowledge that this Agreement supersedes all prior or contemporaneous representations, agreements, understandings or commitments, whether written or oral, relating to the subject matter of this Agreement. The invalidity of any provision of this Agreement does not affect the validity of the remaining provisions and the parties shall construe this Agreement as if such invalid provision had been omitted. No provision of this Agreement may be terminated, modified or waived except in a written agreement executed by the parties.

Provider:

Associate (Softech, Inc.):

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SIGNATURE

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SIGNATURE

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NAME PRINTED

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