

Business Associate Agreement

This Business Associate Agreement (the "Agreement"), is effective September 23, 2013 and is unilaterally entered into by MBL Benefits Consulting Corp. ("MBL") to benefit each client of MBL ("Client").

RECITALS

- A. Client, as a plan sponsor of health benefit plans, is required to enter into a Business Associate Agreement to obtain satisfactory assurances that business associates under the Health Insurance Portability and Accountability Act ("HIPAA"), will appropriately safeguard all Protected Health Information ("PHI") as defined herein, disclosed, created or received by business associates on behalf of Client.
- B. Client intends to engage or has engaged MBL to perform certain services as an insurance broker or benefits consultant which will involve disclosure of PHI by Client or Client's employees or their dependents to MBL, or the creation or use of PHI by MBL, and MBL desires to perform such functions.
- C. To provide services to Client, MBL must have access to certain PHI as defined in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (the "Privacy Rule"), including electronic PHI ("Electronic PHI") as defined in the Security Standards for the Protection of Electronic PHI at 45 CFR Part 160 and Part 164, Subparts A and C (the "Security Rule"), set forth by the U.S. Department of Health and Human Services pursuant to HIPAA.
- D. MBL may be considered an organization that provides data transmission of PHI to Client and may require access to PHI to assist Client. As required under Section 13408 of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), MBL will be treated as a Business Associate of the Client.
- E. To comply with the requirements of the Privacy Rule as well as the Security Rule, MBL is unilaterally entering into this Business Associate Agreement with Client.

TERMS OF AGREEMENT

1. Definitions

a. General. The following terms shall have the same meaning as provided in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

b. Specific definitions:

1) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean MBL.

2) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Client.

3) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of MBL. MBL agrees to:

a. Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;

b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

c. Report to Client any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;

d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of MBL agree to the same restrictions, conditions, and requirements that apply to MBL with respect to such information;

e. Make available PHI in a designated record set to the Client as necessary to satisfy Client’s obligations under 45 CFR 164.524;

f. Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Client pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Client’s obligations under 45 CFR 164.526;

g. Maintain and make available the information required to provide an accounting of disclosures to the Client as necessary to satisfy Client’s obligations under 45 CFR 164.528;

h. To the extent MBL is to carry out one or more of Client's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Client in the performance of such obligation(s); and

i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by MBL

a. MBL may only use or disclose PHI in carrying out its responsibilities as Client's insurance broker or benefits consultant.

b. MBL may use or disclose PHI as required by law.

c. MBL agrees to make uses and disclosures and requests for PHI consistent with Client's minimum necessary policies and procedures. To enable MBL to comply with this subparagraph, Client must first directly notify MBL of its applicable policies and procedures. Direct notification shall not include mere posting on Client's web site and must be made in a manner consistent with this Agreement.

d. MBL may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Client.

e. MBL may use PHI for the proper management and administration of MBL or to carry out the legal responsibilities of MBL.

4. Provisions for Client to Inform MBL of Privacy Practices and Restrictions

a. Client shall notify MBL of any limitation(s) in the notice of privacy practices of Client under 45 CFR 164.520, to the extent that such limitation may affect MBL's use or disclosure of PHI.

b. Client shall notify MBL of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect MBL's use or disclosure of PHI.

c. Client shall notify MBL of any restriction on the use or disclosure of PHI that Client has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect MBL's use or disclosure of PHI.

5. Permissible Requests by Client. Client shall not request MBL to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Client.

6. Term and Termination

a. Term. The Term of this Agreement shall be effective as of the date first above written, and shall terminate at any time upon sixty (60) days advance written notice by either party to the

other or on the date Client terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

b. Termination for Cause. Client may terminate the Agreement without advance notice if Client determines MBL has violated a material term of the Agreement and MBL has not cured the breach or ended the violation within thirty (30) days of receiving notice from the Client of such breach or violation.

c. Obligations of MBL upon Termination. Upon termination of this Agreement for any reason, MBL, with respect to PHI received from Client, or created, maintained, or received by MBL on behalf of Client, shall:

- 1) Retain only that PHI which is necessary for MBL to continue its proper management and administration or to carry out its legal responsibilities;
- 2) Return to Client or, if agreed to by Client, destroy the remaining PHI that MBL still maintains in any form;
- 3) 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 MBL retains the PHI;
- 4) Not use or disclose the PHI retained by MBL other than for the purposes for which such PHI was retained and subject to the same conditions set out at section 3 above which applied prior to termination; and
- 5) Return to Client or, if agreed to by Client, destroy the PHI retained by MBL when it is no longer needed by MBL for its proper management and administration or to carry out its legal responsibilities.
- 6) If requested by the Client, MBL will transmit the PHI to another business associate of the Client at termination; provided, however, that Client shall reimburse MBL for reasonable costs incurred to effect such transmission.

d. Survival. The obligations of MBL under this Section shall survive the termination of this Agreement.

7. Miscellaneous

a. Legislative and Regulatory References. All legislative and regulatory terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations, rules, and other official government guidance as currently in effect or hereafter amended.

b. Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

c. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.

d. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

e. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by the law of the state of New York except to the extent preempted by federal law.

f. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

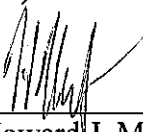
g. Construction and Interpretation. The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

h. Notices. All notices and communications required by this Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address(es) that each party specifies in writing. Notices sent to MBL via electronic mail shall be sent to hmetzger@mbllbc.com, with a copy to MBL legal counsel, jwoehlke@mbllbc.com

i. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter.

IN WITNESS WHEREOF, the MBL has caused this Agreement to be executed as of the date first written above.

MBL Benefits Consulting Corp.
("MBL")

By 

Howard J. Metzger
President

