

Business Associate Addendum – Blue Diamond

This Business Associate Addendum for Blue Diamond Enhanced Security Support ("Addendum") supplements and is made a part of the International Passport Advantage Agreement (for Software Subscription and Support for IBM Programs or Selected Support for Selected Programs, but excluding Selected Support for Non-IBM Programs); the Client Relationship Agreement (for Subscription and Support for Programs and warranty and maintenance Service for Machines, but excluding support and maintenance for Non-IBM Products); the IBM Client Agreement (for Program Services and warranty and maintenance Service for IBM Machines, but excluding support and maintenance for Non-IBM Machines and Non-IBM Programs); the IBM Agreement for the Acquisition of Software Maintenance (for S&S for Eligible Programs); and/or the International Program License Agreement (to assist Client in isolating the cause of a problem with Programs) by and between the undersigned customer ("Customer") and International Business Machines Corporation ("IBM"). For clarity, this Addendum does not apply to support for hosted services (including Software as a Service) or on-site services. IBM and Customer may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

Customer and IBM are Parties to the Agreement pursuant to which IBM provides certain services to Customer, the terms of which are outlined in more detail in statements of work or other comparable individual transaction documents. In connection with those services, Customer may disclose to IBM certain individually identifiable health information held by Customer ("Protected Health Information," as defined at 45 C.F.R. § 160.103) that is subject to protection under the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, including by the Health Information Technology for Economic & Clinical Health Act of the American Recovery and Reinvestment Act of 2009 ("HITECH Act"), certain regulations promulgated under HIPAA by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 and 164 and certain regulations promulgated pursuant to the HITECH Act (collectively, "HIPAA").

The purpose of this Addendum is to help facilitate Customer's compliance with the requirements of HIPAA and IBM's compliance with those portions of HIPAA made applicable to Business Associates by the HITECH Act when (i) Customer is a "covered entity," and (ii) IBM is the recipient of Protected Health Information from Customer under the Agreement and is acting as a "business associate" of Customer, as those terms are defined by HIPAA.

The Customer acknowledges that IBM may act in a capacity other than as a business associate and that this Addendum only applies to the extent that IBM is acting as a business associate for Customer. Hereinafter, however, IBM will be referred to as "Business Associate."

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained in this Addendum, the delivery and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1. Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in HIPAA.
- 2. Applicability.** This Addendum shall be applicable solely to Protected Health Information (i) received by Business Associate from Customer or (ii) created, received or maintained by Business Associate on behalf of Customer. Customer will not provide Business Associate with access to Protected Health Information unless a description of the Protected Health Information, its location and any requirements related to such Protected Health Information are mutually agreed upon in the applicable transaction document.
- 3. Minimum Necessary Disclosures.** In accordance with 42 U.S.C. §17935(b), Customer shall limit its use, disclosures and requests of Protected Health Information to Business Associate to the minimum necessary to accomplish the services Business Associate is performing for Customer. Business Associate shall further limit its use, disclosures and requests of Protected Health Information received from Customer by exercising reasonable discretion to determine what constitutes the minimum necessary Protected Health Information to perform or have performed the services Business Associate is performing for Customer.

4. Scope of Use of Protected Health Information. Business Associate shall not use or disclose Protected Health Information for any purpose other than as permitted or required by this Addendum or as required by law; provided that to the extent Business Associate is to carry out Customer's obligations under the Privacy Rule as agreed by the parties in writing, Business Associate will comply with the requirements of the Privacy Rule that apply to Customer in the performance of those obligations. Customer will send Protected Health Information to IBM only when necessary for IBM support and maintenance purposes pursuant to the terms of the applicable Agreement and only through the secure channel provided to Customer.

5. Permitted Uses and Disclosures. Unless otherwise limited in this Addendum, in addition to any other uses and/or disclosures permitted or required by this Addendum, Business Associate may:

5.1 make any and all uses and disclosures of Protected Health Information necessary to provide the services and perform its obligations under the Agreement.

5.2 use and disclose Protected Health Information, if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law or any third party to which Business Associate discloses Protected Health Information for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only for the purpose for which it was disclosed to the third party or as Required by Law; and (ii) the third party promptly will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been compromised.

5.3 provide Data Aggregation services relating to the Health Care Operations of Customer in accordance with the Privacy Rule.

6. Safeguards for the Protection of Protected Health Information. Business Associate shall (i) use safeguards that are designed to appropriately prevent the use or disclosure (other than as provided for by this Addendum) of Protected Health Information that Business Associate processes on Customer's behalf and (ii) implement administrative, physical and technical safeguards that are designed to reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Customer's behalf. In each case, the foregoing safeguards shall be those mutually agreed to in applicable statements of work or in comparable contract documents describing the services to be performed. In all cases, Business Associate shall comply with the Security Rule requirements for Business Associates in 45 C.F.R. Parts 160 and 164 (Subparts A & C).

7. Reporting of Unauthorized Uses or Disclosures. In compliance with HIPAA (i) Business Associate shall report to Customer any use or disclosure of Protected Health Information of which Business Associate becomes aware that is not provided for or permitted in this Addendum, and (ii) Business Associate shall report to Customer any Security Incident and any Breach of Unsecured Protected Health Information of which it becomes aware without unreasonable delay following the discovery by Business Associate of such Security Incident or Breach. Business Associate shall provide Covered Entity with written notification of Breach in accordance with 45 C.F.R. § 164.410.

8. Use of Subcontractors. To the extent that Business Associate discloses Protected Health Information and/or Electronic Protected Health Information to one or more subcontractors or agents, Business Associate shall cause each such subcontractor and agent to sign an agreement with Business Associate containing at least as restrictive provisions and conditions related to the protection of Protected Health Information and/or Electronic Protected Health Information as those that apply to Business Associate under this Addendum.

9. Authorized Access to and Amendment of Protected Health Information. To the extent that Business Associate maintains Designated Record Sets, Business Associate shall (i) within forty-five (45) business days of a written request by Customer for access to Protected Health Information about an Individual contained in any Designated Record Set of Customer maintained by Business Associate, make available to Customer in accordance with 45 C.F.R. § 164.524, all such Protected Health Information held by Business Associate which may be by providing electronic access to Customer of Customer data maintained or processed by Business Associate, and (ii) within forty-five (45) business days of a written request by Customer to amend Protected Health Information, incorporate any amendments Customer makes to Protected Health Information in accordance with 45 C.F.R. § 164.526. To the extent Business Associate does not maintain Designated Record Sets and receives a request for access to PHI directly from an Individual, Business Associate shall direct the Individual to contact Customer directly.

10. Accounting of Disclosures of Protected Health Information. Business Associate shall keep records of disclosures of Protected Health Information made by Business Associate (the "Disclosure Accounting") during the term of this Addendum in accordance with 45 C.F.R. § 164.528. Business Associate shall provide the Disclosure Accounting to Customer within forty-five (45) days of receiving a written request therefor from Customer. Business Associate shall comply with, and assist Customer in compliance with, additional requirements of 42 U.S.C. § 13405(c), if and when applicable.

11. Business Associate Response to Direct Requests by Individuals. For Protected Health Information held by Business Associate, in the event that Business Associate receives any requests from Individuals requesting access or amendment to such Individual's Protected Health Information, or an accounting of disclosures of Protected Health Information, Business Associate will promptly provide notice to Customer of such request so that Customer may respond directly to the Individual regarding such request. If Business Associate receives notice that Customer has not timely i) provided access to Individuals requesting access, ii) made amendments to Protected Health Information requested by Individuals, or iii) provided an accounting to Individuals requesting an accounting of disclosure of Protected Health Information, then, at Customer's expense, Business Associate may respond directly to any such Individuals who ask Business Associate for such access, amendment, or accounting. In such event, Business Associate will notify Customer and Customer shall cooperate with Business Associate and shall reimburse Business Associate for all costs and expenses related to any such access granted, amendments made, or accounting provided by Business Associate.

12. Health and Human Services. Business Associate shall make its internal practices, books and records related to the use and disclosure of Protected Health Information under the Agreement and this Addendum available to Secretary of the Department of Health and Human Services for the purpose of determining Customer's compliance with 45 C.F.R. § 164.500 et seq.

13. Future Protections of Protected Health Information. Upon the expiration or earlier termination of the Agreement for any reason, if feasible, Business Associate shall return to Customer, or, at Customer's direction, destroy, all Protected Health Information in any form. If such return or destruction is not feasible, Business Associate shall extend the protections of this Addendum to the Protected Health Information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

14. Prohibition on Sale of Protected Health Information. Except as provided in Section 13405(d)(2) of the HITECH Act, neither Business Associate nor Customer shall receive remuneration in exchange for any Protected Health Information of an Individual absent a valid authorization from such Individual.

15. Termination of the Agreement. Customer may terminate those portions of the Agreement that require Business Associate to use or disclose Protected Health Information in the event Business Associate materially breaches this Addendum. Such termination shall be in accordance with and subject to any rights to cure and payment obligations specified in the Agreement. Business Associate may terminate those portions of the Agreement which require Business Associate to use or disclose Protected Health Information in the event Customer breaches a material term of this Addendum or in the event Business Associate becomes aware that Customer is in violation of any of the substantive requirements of subsection of 45 C.F.R. § 164.504(e)(2) otherwise imposed upon Customer by HIPAA, which Customer fails to cure within a reasonable time.

16. Effect on Agreement. This Addendum is not intended to, nor shall it be construed to, reduce or diminish any of Business Associate's or Customer's obligations under the Agreement. Accordingly, except as to the extent expressly inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect and shall not be modified, diminished or reduced hereby. There are no intended third party beneficiaries under this Addendum.

17. Assignment. Neither Party may assign this Addendum, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither Party will unreasonably withhold such consent. The assignment of this Addendum, in whole or in part, to any majority-owned subsidiary in the United States or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for Business Associate to divest a portion of its business in a manner that similarly affects all of its customers.

Each party accepts the terms of this Addendum by signing this Addendum (or another document that incorporates it by reference) by hand or electronically. Once signed, any reproduction of this Addendum made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original.

Agreed to:

Customer Company Name:

By _____

Authorized signature

Title:

Name (type or print):

Date:

Customer number:

Enterprise number:

Customer address:

Agreed to:

International Business Machines Corporation

By _____

Authorized signature

Title:

Name (type or print):

Date:

Agreement number:

IBM address: