TRI-CITY HEALTHCARE DISTRICT AGENDA FOR A REGULAR MEETING OF THE AUDIT, COMPLIANCE AND ETHICS COMMITTEE

October 17, 2019 8:30 a.m. – 10:00 a.m.

Assembly Rm. 1

Tri-City Medical Center, 4002 Vista Way, Oceanside, CA 92056

The Committee may make recommendations to the Board on any of the items listed below, unless the item is specifically labeled "Informational Only"

		Time	Action/	Requestor/
	Agenda Item	Allotted	Recommendation	Presenter
				Chair
1.	Call to order –	5 min.		
-				Chair
2.	Approval of Agenda	2 min.		
	Public Comments – Announcement	1 min		Standard
	Comments — Announcement Comments may be made at this time by members of the public and Committee members on any item on the Agenda before the Committee's consideration of the item or on any matter within the jurisdiction of the Committee. NOTE: During the Committee's consideration of any Agenda item, members of the public also have the right to address the			
	Committee at that time regarding that item.			
4.	3			Chair
	Ratification of Minutes- September 17, 2019	3 min.	Action	Cilali
5		_		
	Old Business - Discussion and Possible Action	4		
	a) Administrative Policies & Procedures: 1) Chief Compliance Officer – 8750-535 (Delete and incorporate into Chief Compliance Officer Job Description)	15 min.	Discussion/ Possible Action	Chair
6	2) Business Associate Agreement – 8610-511			
25	New Business – Discussion and Possible Action a) Administrative Policies & Procedures: 1) Disclosure of Information to Public and Media – 8610-524	10 min.	Discussion/ Possible Action	Chair
7.	Committee Communications	5 min.		AIL
8.	Committee Openings Open			Chair
Ο.	Committee Openings – One	3 min.		
9.	Date of Next Meeting: January 16, 2020	1 min		Chair
J.	Joseph Marchiesting. January 10, 2020	1 min.		
				OI 1
10.	Adjournment Total Time Bud eted for Meetin			Chair

Tri-City | |ical Center Audit, Compliance & Ethics Committee September 17, 2019 Assembly Room 1 8:30 a.m-10:30 a.m.

Members Present: Director Larry W. Schallock(Chair); Director George W. Coulter; Director Tracy M. Younger; Stan Dale, Community Member;

Carl Marcuzzi; Cary Mells, M.D., Physician Member

Non-Voting Members: Steve Dietlin (CEO); Scott Livingstone, COO; Ray Rivas, CFO; Susan Bond, General Counsel

Others Present: Teri Donnellan, Executive Assistant; Kristy Larkin, Director of Compliance, Audit & Monitoring; Maria Carapia, Compliance

Specialist; Anh Nguyen, Controller; Carli Covey, Senior Staff Accountant; Winita Phongsamran, Lead Staff Accountant;

Stacy Stelzriede, Engagement Partner (Moss Adams); Kyle Rogers, Audit Manager

Absent:

	Discussion	Action Recommendations/ Conclusions	Person(s) Responsible
1. Call to Order	The meeting was called to order at 8:30 a.m. in Assembly Room 1 at Tri-City Medical Center by Chairman Schallock.		
	Chairman Schallock welcomed new community members, Mr. Stanley Dale and Mr. Carl Marcuzzi.		
	Chairman Schallock also reported Kathryn Fitzwilliam applied and was appointed to the Finance & Operations Committee and therefore will no longer serve the Audit, Compliance & Ethics Committee as a subject matter expert.		
2. Approval of Agenda	It was moved by Director Coulter and seconded by Director Younger to approve the agenda as presented. The motion passed unanimously.	Agenda approved.	
3. Comments by members of the public and committee members on any item of interest to the public before Committee's consideration of the item	There were no public comments.		

	Discussion	Action Recommendations/ Conclusions	Person(s) Responsible
 Ratification of minutes – July 16, 2019 	It was moved by Mr. Dale and seconded by Director Coulter to approve the minutes of July 16, 2019, as presented. The motion passed unanimously.	Minutes ratified.	
4. Old Business - None	and described to the second se	The state of the s	
5. New Business a) Fiscal 2019 Financial Statement Audit – Moss Adams	Ms. Stacy Stelzriede, Engagement Partner with Moss Adams presented the results of the FY 2019 Financial Statement Audit and Single Audit. Highlights included the following: The auditors will issue an unmodified opinion which reflects the Financial Statements are presented fairly and in accordance with US Generally Accepted Accounting Principles. There were no material weaknesses, no significant deficiences and no compliance findings. No difficulties were encountered in performing the audit. There were no proposed, corrected or uncorrected adjustments. With regard to Patient Accounts Receivable, Ms. Stelzriede stated historically Tri-City collects 101% of what we recorded which is very impressive. Ms. Stelzriede reviewed the following notes: Notes 8 and 15 – Short Term Debt Note 9 – Long Term Debt Note 14 – Legal Proceedings Ms. Stelzriede referred to and Mr. Dietlin commented on a \$5.1 million non-operating charge related to the MOB matter. It is reflected as an offset to deposits as of June 30, 2019. Mr. Dietlin stated Note 14 and Note 7 in the Financial	Recommendation to be sent to the Board of Directors to accept the FY2019 Financial Statement Audit and Single Audit as presented; item to be placed on Board agenda and included in Agenda packet.	Ms. Donnellan

Discussion	Action Recommendations/ Conclusions	Person(s) Responsible
Statements refer to this matter. Lastly, Ms. Stelzriede reviewed the Financial Ra Metrics that included Cash on Hand (Days), Cur Days in Accounts Receivable, Debt to Capitalize EBITDA% of Operating Income. Days Cash on days and trending upward. Mr. Dietlin comment prior to HUD financing Days Cash on Hand was noted that there is not a "days cash on hand" co requirement for HUD. Mr. Rivas commented on the strong current ratic good measure for solvency. Days in Accounts Receivable is 49. Ms. Stelzrie commented Days A/R is very good at 52 compa clients. Ms. Stelzriede commented earnings before inter and depreciation (EBITDA)as a percentage of o revenue is 4.5% and for that figure to be above. District hospital is outstanding. Mr. Rivas referred the committee to page 16 of the Financials which reflects the loss for earnings in expense is roughly the same as last year due to non-cash charge, however operating results impover \$4 million. Mr. Dietlin also commented on Note 15 - Subsect Events which reflects that the District amended the Credit and Security Agreement increasing the restrict of credit to \$15.4 million, decreasing the interest LIBOR plus 3% and extending the maturity date 30, 2022. Both Mr. Rivas and Mr. Dietlin commented on the debt has gone down and we are investing in cap while cash position has improved and operating	atios and rent Ratio, ation and Hand is 53 ed in 2016 13. He venant So which is a acide red to other est, taxes perating in for a acide excess of a one-time roved by suent he Midcap evolving line rate to to August e fact that ital assets	

	Discussion	Action Recommendations/ Conclusions	Person(s) Responsible
	including EBITDA and EROE have improved. Staff left the meeting at 9:07 a.m. to allow the committee to ask questions of the auditors. Staff returned to the meeting at 9:15 a.m. Mr. Dietlin expressed his appreciation to the Accounting and Finance Staff including Anh Nguyen, Controller, Carli Covey, Senior Staff Accountant and Winita Phongsamran, Lead Staff Accountant present at today's meeting for their work on the audit. Ms. Stelzriede stated it is rare to be able to issue the audit this early and very unusual for a District Hospital to go five-six years without any material weaknesses, management letter comments or proposed adjustments. It was moved by Mr. Stan Dale and seconded by Dr. Cary Mells to recommend the Board accept the FY2019 Financial Statement Audit and Single Audit as presented. The motion passed unanimously. Ms. Stacy Stelzriede and Kyle Rogers left the meeting at 9:21 a.m.		
 b) Administrative Policies & Procedures: 1) Chief Compliance Officer – 8750-535 	Chairman Schallock provided background information on the reporting structure for the Chief Compliance Officer which was previously a position that was hired by the Board and reported directly to the Board. In 2017 the Board recommended the Compliance Officer report to the Chief Executive Officer (CEO) and that the CEO have hiring/firing authority as well as day-to-day oversight. The Compliance Officer would continue to have a dotted line to the Board. Chairman Schallock stated the policy is brought back today at the request of a Board member who suggested the policy reflect that the Board must concur with the termination of the COO. Mr. Dietlin commented on the importance of the authority and responsibility for the Compliance Officer residing with the same person or persons (either the Board	Chief Compliance Officer Policy 8750-535 and Chief Compliance Officer Job Description will be placed on the October agenda.	Ms. Donnellan

	Discussion	Action Recommendations/ Conclusions	Person(s) Responsible
	or the CEO). Chairman Schallock recommended the policy be amended to strike the language "or is removed with Board concurrence". Mr. Dietlin clarified the Compliance Officer would continue to have a dotted line to the Board which is reflected in the policy and the Organizational Chart. Discussion was held regarding the necessity of a separate policy when there is a Job Description in place and the problems that could arise related to performance liability with two separate documents. It was suggested both the Policy and Job Description be brought back to the October meeting to determine if the two documents should incorporated into one.		
2) Business Associate Agreement 8610-511	Chairman Schallock reported the Business Associate Agreement Policy 8610-511 was reviewed previously by the Chief Compliance Officer, AP&P Committee and Organizational Compliance Committee. Chairman Schallock requested that General Counsel review the policy as it pertains to "legal". Ms. Bond, General Counsel had suggestions regarding expanding the definition of "covered entity". She also recommended the language "service agreement" be changed to "contractual agreement". Lastly she recommended the BAA be updated annually. It was suggested the link to HHS.gov be referenced in the definition of "covered entity" to provide for any additions to the definition going forward. It was recommended the content experts provide their suggested revisions for incorporation and the policy will be brought back to the October meeting.	Content owners to provide suggested revisions and amended policy to be placed on the October agenda.	Ms. Bond/Ms. Larkin
 Comments from Committee Members 			
'. Committee Openings	There is currently one community committee opening.	Information only.	
B. Date of Next Meeting	The Committee's next meeting is scheduled for October 17, 2019.		# # # # # # # # # # # # # # # # # # #

	Discussion	Action Recommendations/ Conclusions	Person(s) Responsible
9. Adjournment	Chairman Schallock adjourned the meeting at 9:45 a.m.	100 m	



ADMINISTRATIVE COMPLIANCE

DELETE - follow Job **Description for Chief Compliance Officer**

ISSUE DATE:

05/12

SUBJECT: Chief Compliance Officer

REVISION DATE(S): 12/12, 04/15

POLICY NUMBER: 8750-535

Administrative Compliance Content Expert Approval:

Administrative Policies & Procedures Committee Approval:

Organizational Compliance Committee Approval:

Medical Executive Committee Approval:

Audit, Compliance & Ethics Committee Approval:

Board of Directors Approval:

01/1905/19

01/1905/1908/19

-n/a05/19

n/a

02/19

02/19

PURPOSE:

This policy provides for the appointment of, and sets forth the general duties and responsibilities of, Tri-City Healthcare-District's (TCHD's) Chief Compliance Officer.

GENERAL POLICY:

The Chief Compliance Officer-(CCO) shall advise the Board of Directors (Board) and Chief Executive Officer (CEO) regarding the design-and implementation of the agency's ethics-and compliance programs. The CCO shall-report directly to the CEO with a dotted line to the Board regarding-material legal-and compliance-risks and mitigation efforts. In the event that the CCO ceases to be a TCHD employee, or is removed or resigns or is removed with Board concurrence from the position of CCO, the Board CEO shall promptly appoint an interim CCO until such time as an appropriate permanent CCO may be identified and engaged.

HIRE OF CHIEF-COMPLIANCE OFFICER:

- The CCO shall be hired by the CEO. with approval from the TCHD Board.
- The CEO shall cause the hiring of the CCO-with approval of the Board to be recorded in writing and properly and effectively-announced to TCHD's employees, members of the Medical Staff and other affected individuals, including, but not limited to, contractors who furnish patient care-or related services to TCHD-and/or its patients.
- The CCO-shall have the duties and responsibilities set forth below.
- The CCO-shall have direct access and report directly to TCHD's Board of Directors, Audit, Compliance & Ethics (ACE) Committee, and CEO regarding the status of the Compliance Program and any material developments affecting the Compliance Program. Such rReports shall-occur as frequently as needed in the best interests of TCHD, but in any event no less than on a quarterly basis.
- For administrative purposes, the CCO-shall report directly to the CEO.

D. QUALIFICATIONS OF COMPLIANCE OFFICER

- The CCO shall have credentials and experience appropriate for understanding the TCHD's mission and operations, and for executing the duties and responsibilities set forth in this Policy.
- The CCO shall demonstrate high integrity, good judgment, assertiveness, and an approachable demeaner, when working with-TCHD's Beard, senior management, employees, Medical Staff, and relevant contractors and agents.
- The CCO must-have sufficient time to dedicate to the CCO position and its attendant duties and responsibilities. The CCO also shall have sufficient resources to perform his/her duties-and responsibilities.

AUTHORITY OF COMPLIANCE OFFICER; REVIEW OF FINDINGS

- The CCO shall have the authority to access and review all TCHD records and other documents (whether in paper or electronic form) and interview all TCHD employees, as necessary to discharge his/her duties and responsibilities.
- The CCO shall have sufficient management authority, responsibility, and resources to permit the performance of his/her duties.
- The CCO shall have the authority to report to the CEO, Board, and ACE Committee regarding compliance matters at any time.
- The CCO shall have direct access to all senior management.
- With approval of the Board or CEO, the CCO shall have authority to engage qualified outside legal counsel and consultants to assist him/her achieve the objectives of the Compliance Program. The CCO should routinely review with General Counsel any matters reported to the Board.
- 5. The CCO shall provide prior notice and consultation with the General Counsel or the CEO or the Board of Directors in the absence of the CEO, prior to obtaining outside council or consultants to achieve the objectives of the Compliance Program.
- TCHD may commission an independent review to verify any findings of the CCO.

SPECIFIC DUTIES AND RESPONSIBILITIES OF COMPLIANCE OFFICER

- The CCO will be responsible for, among other things:
 - Advise the Board and the CEO regarding the design and implementation of TCHD's Compliance Program.
 - Oversee and menitor the implementation and operation of TCHD's Compliance Program, including staff supervision as necessary.
 - Monitor changes and/or updates in relevant state and federal health care program laws and regulations.
 - Report on a regular basis (at least quarterly) to the CEO, ACE Committee, and Board regarding compliance issues and the status of TCHD's Compliance Program.
 - Monitor various guidance, alerts and ether communications issued by federal or state government agencies, including the U.S. Department of Health and Human Services, the Federal Trade Commission, and the U.S. Department of Justice.
 - Develop written policies to implement the Compliance Program and address existing and new compliance risk areas.
 - Amend the Compliance Program (including the Code of Conduct and Policies), as necessary.
 - Oversee the meetings, work plans, and operations of the internal compliance committee.
 - Develop, coordinate, and document TCHD's compliance related educational and training programs.
 - Promote awareness of, and compliance with, applicable laws and policies on the part of Directors, employees, members of the Medical Staff, contractors, and agents.
 - Ensure new employees and contractors are screened against appropriate state and federal debarment/sanction lists.
 - Ensure new employees receive the Code of Conduct and related training.
 - Coordinate internal and external compliance reviews or audits of TCHD's business operations and practices.
 - n. Review TCHD business arrangements to ensure compliance with applicable laws, regulations, and policies. This may be accomplished by conferring with legal counsel, as appropriate.
 - Respond to compliance inquiries.
 - Ensure TCHD's Confidential Reporting Line (Values Line) and other lines of communication are operating effectively and that compliance concerns are documented and addressed promptly and appropriately.
 - q. Ensure exit interviews of departing employees are conducted to elicit information concerning potential violations of laws, regulations or TCHD's policies.

Administrative Compliance Chief Compliance Officer Policy 8750-535 Page 3 of 3

- r. Investigate suspected violations of applicable laws, regulations and policies and make recommendations regarding corrective actions, as appropriate.
- s. Consult with Board and logal counsel, as appropriate to the foregoing.

G. REFERENCE(S):

- 1. Compliance Program Guidance for Hospitals, published by the U.S. Department of Health and Human Services, Office of Inspector General, February 1998.
- Office of Inspector General Supplemental Compliance Program Guidance for Hospitals, January 2005.
- 2. California Hospital Association Compliance Manual, 2018



Position Title:	Chief Compliance Officer	Job Code Number:	20020
Department Name/Location:	Administration	Department Number(s):	8610
Status (Check one):	Exemptx Nonexempt	Position Reports To: (Title only)	CEO
Management Approval (VP or higher):	Chief Executive Officer (CEO)	Date Approved:	May 2017
Compensation Approved by:	HR	Date Approved:	May 2017

The position characteristics reflect the most important duties, responsibilities and competencies considered necessary to perform the essential functions of the job in a fully competent manner. They should not be considered as a detailed description of all the work requirements of the position. The characteristics of the position and standards of performance may be changed by the CEO and / or District with or without prior notice based on the needs of the organization. The physical location for this position will be in the District's corporate headquarters at 4002 Vista Way, Oceanside, CA in an office designated by the CEO.

Position Summary:

The incumbent serves as the primary contact for the District's Compliance Program. This individual occupies a high-level position eporting directly to the Medical Center's CEO and a 'dotted line' reporting responsibility to the District's Board of Directors, and functions as an independent and objective person who directs and monitors the District's Compliance Program. Key responsibilities include: develops, initiates and ensures that policies and procedures for the operation of the Compliance Program are implemented so that the District maintains compliance with all applicable laws, regulations, standards of conduct and policies. In addition, the incumbent advises the CEO and/or his designee and the Board of Directors and all internal committees on material legal and compliance risks, mitigation and corrective actions.

This position functions as the hospital's Privacy Officer and implements TCMC privacy policies and practices. Researches and reviews complaints and requests for further information regarding TCMC privacy policies. Oversees education concerning privacy. Under the direction of the legal, counsel the Privacy Officer also performs investigations and provides reports on privacy related incidents.

Major Position Responsibilities:

- Develop, implement, oversee, monitor and promote the implementation and maintenance of an effective Compliance Program.
- Provide guidance to the CEO, the Board of Directors and the District's senior management regarding matters related to compliance.
- Deliver ongoing reports of Compliance Program activities to the CEO and to the Audit and Compliance Committee.
- Report on a regular basis (and no less than quarterly) to the Board of Directors on activities, changes to, and progress of, the Compliance Program.
- Develop, monitor and revise the Compliance Program, including the Code of Conduct and compliance policies and procedures, as needed and based on changes in, and needs of, the District as well as changes in applicable laws and regulations.
- Develop and coordinate timely educational and training initiatives that focus on the Compliance Program ensuring that Board members and District personnel are educated on compliance matters.
- Ensure independent contractors and agents of the District are aware of the District's Compliance Program and how it affects the services provided by contractors and agents.
 Establish, publicize and reinforce effective lines of communication throughout the organization including, reporting mechanisms, and oversee the District's compliance hotline.

- Staff Office related to appropriate screening of the District's employees, contractors, vendors, and health care providers against state and federal health care program and agency debarment lists in accordance with District policies and procedures. In cooperation with Human Resources, oversee and monitor the enforcement of compliance obligations and standards through

Create and enforce policies and procedures, in cooperation with Human Resources, the Procurement Department and the Medical

- appropriate disciplinary mechanisms.
- Establish and implement systems for routine monitoring and auditing reasonably designed to detect violations of the Code of Conduct and applicable laws, regulations and policies.
- Establish an annual risk assessment process to identify key areas of compliance risk.
- Conduct timely investigations of identified potential compliance issues and consult with the District's legal counsel, as necessary and appropriate.
- Designate work groups and task forces needed to carry out investigations or initiatives of the Compliance Program.
- Develop and implement appropriate and timely corrective action plans to resolve risks and prevent similar future risks.
- Manage other resources, as appropriate, to ensure appropriate legal, compliance and risk program services are provided to the District.

Privacy Officer

- Participates in the development of system-wide privacy policy and ensures uniform implementation of TCMC privacy policy in the facility.
- Leads development and implementation of procedures for timely implementing of uniform privacy policies. Monitors and
 ensures compliance with district-wide policies.
- Receives, documents, tracks, coordinates investigations and action on all complaints concerning TCMC privacy policies and procedures according to established guidelines.
- Ensures that the facility maintains the appropriate authorizations, notices, and materials reflecting current TCMC organizational and legal practices as they relate to privacy.
- Initiates, facilitates, and promotes activities to foster information privacy awareness within the facility. Oversees implementation of TCMC privacy education program requirements and ensures maintenance of education records.
- Coordinates privacy risk assessments and internal privacy audits, formulating and ensuring the implementation of corrective action plans for problems uncovered.
 - Works with the IT and Leadership to provide appropriate system access to users in accordance with established policy and procedure for confidentiality and security of protected health and other information.
- Facilitates development of action plans to mitigate breaches of privacy.

Additional responsibilities may include:

- Oversight of Board approved templates and controls.
- Collector of public record requests and document production.
- Liaison with the Board of Directors and Administration regarding the Corporate Compliance program.
- Facilitate activities related to internal audit and compliance.
- Oversee all contracts in the electronic management system including alerts for deadlines, renewals and regulatory change.
- Other responsibilities assigned by the CEO.

Qualifications:

ESSENTIAL COMPETENCIES, KNOWLEDGE, & EXPERIENCE

- Knowledge of, and familiarity with, health care provider compliance programs, required.
- Knowledge of state and federal laws and regulations related to health care providers and, particularly hospitals, including fraud and abuse, reimbursement and accreditation standards.
- Demonstrated ability to communicate with management and report to boards of directors, required.
- Knowledge of healthcare risk management, claims management, and loss control, required.
- Excellent written and oral communication skills, personal initiative, organized and methodical, meticulous documentation and computer skills, prompt and reliable, thorough and consistent, and flexible and adaptable to change, required.

Education:

· Graduate degree in Healthcare Administration or Juris Doctorate degree required.

Experience:

• Minimum 5 years' experience in a health care compliance program, preferably in a hospital setting, with at least 2 years at an executive level, required.

Certifications:

 Certification in Healthcare Compliance (CHC) through the Health Care Compliance Association (HCCA), California Hospital Association (CHA) or other recognized Compliance Officer Certification, preferred or obtained within 18 months of hire.

Essential Organizational Behaviors

- Demonstrates behaviors that are consistent with the District's Mission and Values and those that reflect the "Standards of Service Excellence".
- 2. Performs job responsibilities in an ethical, compliant manner consistent with the District's values, policies, procedures, and Code of Conduct.
- 3. Works well with team members toward a common purpose. Reinforces the efforts and goals of the work group. Supports the team's decisions regardless of individual viewpoint.
- 4. Demonstrates flexibility in schedules and assignments in order to meet the needs of the organization.
- 5. Utilizes, maintains, and allocates equipment and supplies in a cost-effective and efficient manner. Improves productivity through proper time management.
- 6. Seeks feedback from customers and team members in order to identify and improve processes and outcomes.

Equal Employment Opportunity

Tri-City Medical Center is committed to the principle of Equal Employment Opportunity for all employees and applicants. It is our policy to ensure that both current and prospective employees are afforded equal employment opportunity without consideration of race, religious creed, color, national origin, nationality, ancestry, age, sex, marital status, sexual orientation, or present or past disability (unless the nature and extent of the disability precludes performance of the essential functions of the job with or without a reasonable accommodation) in accordance with local, state and federal laws.

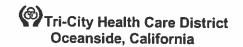
Americans with Disabilities Act

Applicants as well as employees who are or become disabled must be able to perform the essential job functions either unaided or with reasonable accommodation. The organization shall determine reasonable accommodation on a case-by-case basis in accordance with applicable law.

Physical, Mental and Environmental Demands

_		i nysicai, wientai an
		quirements for Job
	Sit	
2	Stand	
3	Walk	
4	Bend/st	
5	Squat/C	
6	Climb S	Stairs
7	Kneel	
8	Balance	
9		n uneven surfaces
10	Reach	
11	Twist/tu	
12	Push/pu	
	*	Patients
_	*	Carts
_	*	Beds/gurneys
	*	Wheelchairs
<u></u>	•	Other:
13		transfers:
	*	Up to 10 lbs.
	*	11-20 lbs.
	*	21-50 lbs.
	*	51-100 lbs.
	*	Greater than 100 lbs.
14	Lifts an	d carries:
		Up to 10 lbs.
	*	11-20 lbs.
	•	21-50 lbs.
	*	51-100 lbs.
	•	Greater than 100 lbs.
Cor	nmunica	tion/Sensory
1	Speakin	g/hearing
	.	In person
	•	Phone
	*	Call system
2	Reading	/writing
	*	English
		Other
3	Visual a	euity
	*	Near
	.	Far
	*	Small figures
		Color differentiation
4	Distingt	uish temperatures
	*	By touch
	*	By proximity
5	Hands	
	*	Repetitive motions
	*	Fine manipulation
	*	Finger dexterity
	*	Gross manipulation
	.	Grasping
-	.	Wrist - ROM
Env	ironmen	tal Requirements/Exposure
1	Blood/l	body fluids
	-	

	nental Demands	
2	Infectious diseases	
3	Radiation	
4	Antineoplastic agents	
5	Laser	
6	Solvents	
7	Chemicals	
8	Heat/cold extremes	
9	Unprotected heights	
10	Helipad	
11	Dust	
12	Fumes/gases/odors	
13	Aerosolized drugs	-
14	Working with VDTs	
15	Working on moving machinery	
16	Inside	
17	Outside/changing climates	
18	Working with electrical wires	
19	Driving auto equipment	
20	Sharp objects	
21	Abusive language from patients	
22	Violent behavior from patients	
23	Confined work environment	
24	Crowded work environment	
Oth	er Factors	
1	Working irregular shifts	
2	Rotating shifts	
3	Working alone	
4	Independent problem-solving	
5	Working with others	
6	Exposure to public:	
	❖ Patients	
	❖ Staff	
	* Physicians	
7	Fast-pace workplace	
8	Periodic education requirement	
9	Frequent change	
10	Exposure to emotional crises of others	
11	Frequent interruptions	
12	Meeting deadlines	
13	Handle multiple priorities	
14	Memory	
	ective Equipment Requirements	
1	Gloves	
2	Goggles/face masks/shields	
3	Ear protection	
4	Gowns	
5		
	Aprons Not at all O = Occasionally	



ADMINISTRATIVE POLICY MANUAL COMPLIANCE

ISSUE DATE:

10/02

SUBJECT: Business Associate Agreement

REVISION DATE: 12/02; 06/06; 07/09

POLICY NUMBER: 8610-511

Administrative Compliance Content Expert Approval:

Administrative Policies & Procedures Committee Approval:

Organizational Compliance Committee Approval:

Medical Executive Committee Approval:

Audit-and, Compliance & Ethics Committee Approval:

Board of Directors Approval:

03/19

05/1503/19

05/19

n/a

06/15

06/15

A.

- According to the terms of the Health Insurance-Portability and Accountability Act of 1996, Public Law 104-191, as-amended ("HIPAA") and-regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA-Regulations"), the Tri-City Healthcare District ("District" or "TCHD") is a "Covered Entity".
- District-enters into agreements with various persons and entities to provide functions or activities regulated by HIPAA on behalf of the District (e.g. data analysis, utilization review) and such functions or activities require the person/entity to create, receive, maintain or transmit PHI. The District also enters into agreements with persons or entities performing services for the District which require the District to Disclose PHI in order for the contracting party to perform a service (e.g. legal, accounting, etc.). These contracting parties are "Business Associates" under HIPAA.
- 3.1. This-Policy summarizes the obligations of District and Business-Associates to meet HIPAA requirements. The purpose of this policy is to outline the criteria for a business associate and establishes criteria for disclosing protected health information to a business associate, including the required content of a Business Associate Agreement ("BAA").

B. **DEFINITIONS:**

- Business Associate: means, aA person or organization who, on behalf of the Tri-City Healthcare District ("District" TCHD), performs certain functions or activities or services that require the Business Associate to create, receive, maintain or transmit PHI-protected health information (PHI) on behalf of the District-TCHD or where the DistrictTCHD needs to dDiscloseure PHI protected health informationPHI to Business Associate for the services.
- 2. Business Associate Addendum-or Agreement ("BAA"): Ais an Addendum-Agreement, Contract or Addendum to an applicable Contract or Services Agreement between the DistrictTCHD and a Business Associate that outlines the specific obligations of the Business Associate related to the Use or Disclosure of District TCHD protected health informationP⊞PHI.
- 3. Covered Entity: lincludes health care providers like the DistrictTCHD that transmit health information in electronic form in connection with certain standard transactions (e.g. claims processing, reference laboratories). See HHS.gov. for further definitions:
 - Covered Entities and Business Associates | HHS.gov
- Data Use Application: Deescribes the purpose, controls and safeguards agreed to by the 4. Business Associate and Covered Entity.
- 5. Designated Record Set: Tthose documents whether maintained in paper, film or electronic formats, that comprise the individual patient's medical record as approved by the Medical

- Executive Committee, that comprises the individual patient's billing records, and any documents used in whole or in part by Tri-City Healthcare District TCHD to make decisions about individuals, including copies from another health care provider's Designated Record Seet.
- 6. <u>Protected Health Information ("PHI")</u>: lindividually identifiable health information transmitted or maintained in paper, -or-electronic, or -other form that is created or received by TCHD AND and
 - a. Relates to the past, present, or future physical or mental health or condition of an individual.
 - b. Relates to the provision of health care to an individual
 - c. Relates to the past, present, or future payment, ANDand
 - d. lidentifies the individual ORor
 - e. With respect to which there is a reasonable basis to believe the information can be used, to identify the individual
- 7. <u>Services Agreement/and or Contract</u>: An agreement between the DistrictTCHD and a third party whereby the third party performs a function, activity or service on behalf of the DistrictTCHD. Services Agreements that require the DistrictTCHD to dDisclose PHI for such functions, activities or services require Business Associate Agreements and/or Addendums.
- 7.8. Workforce Member: eEmployees, Medical Staff and Allied Health Professionals (AHP), volunteers, trainees, Business Visitors and other persons whose conduct, in the performance of work for (TCHD), is under the direct control of TCHD whether or not they are paid by TCHD.

C. POLICY:

- 1. A Business Associate is subject to civil and criminal penalties under Sections 1176 and 1177 of the Social Security Act and is directly liable for compliance with the Health Insurance Portability and Accountability Act ("HIPAA") Privacy and Security Rules.
- 1.2. The DistrictCHD and each Business Associate shall protect the privacy and provide for the security of PHI disclosed to Business Associate in compliance HIPAA with the HIPAA Regulations.
- 2.3. If the District TCHD enters into a Services Agreement with a party that is a Business Associate under HIPAA, the District TCHD will enter into a BAA with such party before dDisclosing PHI to it.
- 3.4. The DistrictCHD will require that Business Associates ensure that agreements with subcontractors that receive, maintain or transmit PHI on behalf of the Business Associates for purposes of Business Associates' BAAs with the DistrictTCHD are subject to the same requirements as those in the DistrictTCHD's BAA.
- 4.5. The DistrictCHD also complies with and requires its Business Associates to comply with applicable state laws and regulatory requirements that may be more stringent thant HIPAA, such as those requiring notification of breaches of PHI.

D. PROCESS:

- 1. As part of the HIPAA Regulations, the Privacy Rule requires District-TCHD to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI. These requirements include, but may not be limited to the following: The BAA shall contain all BAA contractual requirements under the Privacy Rule.
 - a. In conjunction with DistrictTCHD, Business Associate must establish the permitted Uses and Disclosures of PHI by the Business Associate. HIPAA permits the use of PHI for proper management and administration.
 - b. Business Associate must refrain from uUsing or dDisclosing the PHI other than as permitted by the BAA or as required by law.
 - c. Business Associate must use appropriate safeguards to prevent Use or Disclosure of the information other than as provided for in the BAA.
 - d. Business Associate shall have implemented a security program that includes administrative, technical and physical safeguards designed to prevent unauthorized Use or Disclosure of electronic PHI as required by the Security Rule set forth in subchapter C

of Part 45.

- e. Business Associate must report to the District any Use or Disclosure of PHI not provided for in the BAA or any unauthorized or unlawful access, any security incident and/or bBreach of PHI.
- f. Business Associate must ensure that agents and subcontractors that receive PHI from the Business Associate agree to the same restrictions and conditions that apply to the Business Associate.
- g. Business Associate shall cooperate with the DistrictTCHD in fulfilling requests by individuals for access to their PHI that are approved by the DistrictTCHD. If Business Associate maintains PHI received from District-TCHD in a Designated Record Set, Business Associate must make available that information in order to comply with an individual's right to access, inspect, and copy their health information.
- h. If Business Associate maintains PHI in a Designated Record Set, it must also provide that information in accordance with an individual's right to have the District make amendments to PHI.
- Business Associate must provide information required to make an accounting of disclosures of PHI, where such disclosures were made for purposes not related to treatment, payment, and healthcare operations.
- j. Business Associate must agree to make its internal practices, books and records related to the Use and Disclosure of PHI received from or created for the DistrictTCHD available to the U.S. Department of Health and Human Services (HHS) for the purpose of determining the DistrictTCHD's compliance with HIPAA.
- k. Business Associate must return or destroy all PHI in any form at the termination of the Agreement, unless there is a determination that return or destruction is infeasible pursuant to the HIPAA Regulations.
- I. The Business Associate Addendum shall authorize termination of it by the DistrictTCHD if the DistrictTCHD determines that the Business Associate has violated a material term of the Business Associate Agreement and/or Addendum.
- 2. The Contract Manager or other DistrictTCHD employee Legal Department or designee responsible for Services Agreements will determine the need for a BAA. These individuals will determine if the proposed agreement meets the following criteria:
 - a. The outside entity or individual is not a TCHD Workforce Member;
 - b. The outside entity or individual will perform a service or activity "for" or "on behalf of" the District; and
 - c. The services or activities of the outside entity or individual involve creating, receiving, maintaining or transmitting PHI.
 - d. Ascertain whether the contract involves a covered entity.
- 2.3. Attached to this policy is the DistrictA TCHD-approved standard HIPAA Business Associate Agreement and Addendum. This Agreement and Addendum, or a version of the Addendumthereof, modified to provide specific safeguards for the privacy and security of PHI, must be executed.
- 3.4. When required, Business Associate and District TCHD will also execute a Data Use Application.
- 4.5. The Contract Manager, or other District TCHD employee-Legal Department or designee responsible for Services Agreements, will assure ensure that a HIPAA Business Associate Agreement and/or Addendum is executed concurrently with execution of each new Services Agreement between District-TCHD and a party that is identified as a Business Associate and before any PHI is dDisclosed by the DistrictTCHD or used, created or transmitted by the Business Associate on behalf of the DistrictTCHD.
- The executed HIPAA Business Associate **Agreement and/or** Addendum is filed with the original Services Agreement in District-TCHD's Administrative Offices.
- 5.7. 3. Best practice is to conduct annual review of BAA in order to keep up to date on rules and regulations by the Privacy Officer.

E. <u>FORM(S):</u>

Administrative-Pelicy-Manual -- Compliance Business Associate Agreement Policy 8610-511 Page 4 of 4

- 1. HIPAA Business Associate Agreement
- 1.2. HIPAA Business Associate Data Use Application
- 3. HIPAA Business Associate Addendum

2.F. RELATED DOCUMENT(S):

3.1. Instructions - Data Use Application

F.G. REFERENCE(S):

- 45 Code of Federal Regulations (CFR) Section 164.524
- 2. 45 CFR Section 164.526
- 3. 45 CFR Section 164.528
- 4. 45 CFR Section 164.530
- 4.5. 45 CFR 160.103.





BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into by and between Tri-City Healthcare District, a health care district organized under the Local Health Care District Law of the State of California ("HOSPITAL"), and _______ ("CONTRACTOR") (the HOSPITAL and CONTRACTOR may be referred to individually as a "Party" and collectively as the "Parties"), and is effective, as detailed within, when signed by authorized representatives of both Parties.

RECITALS

- A. HOSPITAL and CONTRACTOR wish to form or have already formed a business relationship, under which CONTRACTOR may perform certain functions for or on behalf of HOSPITAL involving either or both of the Disclosure of Protected Health Information (hereafter "PHI") by HOSPITAL to CONTRACTOR and/or the creation or Use of PHI by CONTRACTOR on behalf of HOSPITAL.
- B. HOSPITAL and CONTRACTOR intend to protect the privacy and provide for the security of PHI Disclosed to or Used by CONTRACTOR pursuant to this Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104.191; commonly referred to as "HIPAA"), the regulations promulgated thereunder, and other applicable laws, including without limitation the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (Public Law 111-005; commonly referred to as the "HITECH Act"), the HIPAA Final Omnibus Rule of January 2013, the California Medical Information Act ("CMIA") (CA Civil Code §§ 56-56.37), the California Information Practices Act (CA Civil Code §§ 198-1798.78), California Health & Safety Code § 1280.15, California Health & Safety Code §§ 123100-123149.5, and any statutes and regulations adopted or to be adopted in conjunction with or pursuant thereto (hereinafter, collectively referred to as the "HIPAA Rules").
- C. HOSPITAL may engage in one or more enterprises governed by HIPAA regulation 45 C.F.R. § 160.103, and may require services from CONTRACTOR, the nature of which may require that PHI be Used or generated by CONTRACTOR on behalf of HOSPITAL.
- D. This Agreement sets forth the terms and conditions pursuant to which PHI that is created, received, maintained, or transmitted by CONTRACTOR, from or on behalf of HOSPITAL, shall be managed. This Agreement supplements and/or amends each of the Contractual Agreements with respect to CONTRACTOR's creation, receipt, Use, and transmission of PHI thereunder, so as to allow HOSPITAL and CONTRACTOR to comply with the HIPAA Rules.





In consideration of the mutual promises below, in contemplation of the exchange of information under this or other contractual arrangements and in order to comply with legal requirements for the protection of this information, the parties agree as follows:

1. **DEFINITION OF TERMS**

- 1.1 Catch-all definition. The following terms (and any other capitalized terms not specified here), if used in this Agreement, shall have the same meaning as those terms in the HIPAA Rules: Accounting of Disclosures, 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.
- 1.2 Agreement means this Business Associate Agreement.
- 1.3 Contractual Arrangements shall refer to all other contracts, memoranda of understanding or agreement, or any similar instruments or oral arrangements establishing the exchange of goods or services between HOSPITAL and CONTRACTOR.
- 1.4 **De-identified** shall have the meaning set forth in 45 C.F.R. § 164.514(b). This definition, and the related section of the HIPAA Rules, specifies that all 18 of the PHI identifiers shall be removed. De-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement so long as the information remains separated from any information by which the Record Subject may be identified.
- 1.5 **HOSPITAL** shall mean the Party so named above, and shall include any members of its workforce, officers, agents, representatives and contractors.
- 1.6 **CONTRACTOR** shall mean the Party so named above, and any members of its workforce, officers, agents, subcontractors, representatives and affiliated contractors.
- 1.7 **Record Subject** shall mean the Individual who may be identified by, and who is the subject of, any record or records containing PHI.

2. RIGHTS OF CONTRACTOR

2.1 Data Ownership: CONTRACTOR acknowledges that he or she has no ownership interest in PHI received from HOSPITAL or created on HOSPITAL's





behalf. CONTRACTOR will take no actions and make no representations that contradict this acknowledgment.

2.2 Services: Except as otherwise specified in this Agreement or by law, CONTRACTOR may make any and all Uses or Disclosures of PHI necessary to perform its obligations to HOSPITAL under existing or future Contractual Arrangements. All other Uses or Disclosures are prohibited. CONTRACTOR may Use or Disclose PHI for the purposes made necessary under its Contractual Arrangements with HOSPITAL only (i) to members of its workforce, contractors, and agents, in accordance with this Agreement; or (ii) as directed by the HOSPITAL.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR

With regard to his or her Use and/or Disclosure of PHI, CONTRACTOR agrees to:

- Use or Disclose the Minimum Necessary PHI that it receives from or creates for HOSPITAL only as permitted or required by this Agreement or as otherwise Required by Law. [164.502(a)(4)(i) and (ii); 164.504(e)(2)(i); 164.504(e)(2)(ii)(A)] This includes, but is not limited to, CONTRACTOR being able to:
 - a. Disclose PHI when required by the Secretary to investigate or determine the CONTRACTOR's compliance with the HIPAA Rules.
 - b. Disclose PHI to the HOSPITAL, Individual, or Individual's designee, as necessary to satisfy a HOSPITAL's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an Individual's request for an electronic copy of PHI.
 - c. Use the PHI in its possession for its own normal management and administration, and to fulfill any present or future legal responsibilities of CONTRACTOR, provided that such Uses are permitted under California and federal confidentiality laws.
 - d. Disclose the PHI in its possession to third parties for the purpose of its own normal management and administration, or to fulfill any present or future legal responsibilities of CONTRACTOR, provided that:
 - i. the Disclosures are Required by Law; or
 - ii. CONTRACTOR has received from the third party reasonable assurances that that entity will treat PHI as CONTRACTOR would under this Agreement including, where applicable, via written contract as required in 45 C.F.R. § 164.504(e)(5).
 - e. provide Data Aggregation services relating to the Health Care Operations of HOSPITAL. Under no circumstances may





- CONTRACTOR Disclose PHI of HOSPITAL to another Covered Entity absent the explicit authorization of HOSPITAL.
- f. request PHI in the form of a Limited Data Set, to be used for limited research, public health or health care operations purposes.
- g. De-identify PHI obtained by CONTRACTOR under this Agreement and use such De-identified data, provided that such use is in accordance with the De-identification requirements of the HIPAA Rules.
- 3.2 report to HOSPITAL's designated Privacy Officer any Use or Disclosure of PHI that is not permitted or required by this Agreement, and in addition, report to HOSPITAL's designated Privacy Officer any Security Incident, or any Breach (as defined in the HITECH Act or applicable state law, including without limitation section 1280.15 of the California Health & Safety Code), within 1 day of CONTRACTOR's discovery of such Breach, Security Incident, and/or unauthorized Use or Disclosure, with pertinent detail as this information is collected and to include the Risk Assessment performed by CONTRACTOR (and any necessary supporting information) in accordance with the HIPAA Rules included or following as soon thereafter as may be possible and mutually agreed by the Parties. [164.314(a)(2)(i)(C); 164.504(e)(2)(ii)(C); 164.410(b); 164.410(c)]
- 3.3 establish and act upon policies and procedures for protecting the privacy and security of PHI, including, but not limited to, contingency planning/backup and periodic security training, as required by the HIPAA Rules, and to the extent the CONTRACTOR is to carry out HOSPITAL's obligations the CONTRACTOR will comply with the requirements of 45 C.F.R., Part 164, Subpart C and Subpart E. [164.314(a)(2)(i)(A); 164.504(e)(2)(ii)(B); 164.504(e)(2)(ii)(H)]
- implement administrative, physical, and technical safeguards that meet or exceed industry-standards and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of HOSPITAL, as required by the HIPAA Rules, covering at a minimum those elements of the HIPAA Rules made directly applicable to CONTRACTOR or any of CONTRACTOR's contractors. [164.504(e)(2)(ii)(B)]
- ensure, through written contract or similar vehicle, that any subcontractor that creates, receives, maintains or transmits PHI on behalf of CONTRACTOR or HOSPITAL, agrees to the same restrictions and conditions that apply through this Agreement to CONTRACTOR with respect to such information. [164.314(a)(2)(i)(B); 164.504(e)(2)(ii)(D)]
- 3.6 make available its internal practices, books and records relating to any Use or Disclosure of PHI to the Department of Health and Human Services for purposes of determining HOSPITAL's and/or CONTRACTOR's compliance with the HIPAA Rules. [164.504(e)(2)(ii)(I)]





- 3.7 provide HOSPITAL any information requested by HOSPITAL, in writing, that is needed to permit HOSPITAL to respond under the HIPAA Rules to a request by a Record Subject for an Accounting of the Disclosures of PHI of the individual, within 10 business days of the request; the response shall be in electronic format if so required by the HITECH Act and requested by HOSPITAL, and shall cover the lesser of the timeframe specifically requested or the maximum timeframe that over which such information must be retained by HOSPITAL and/or CONTRACTOR under the applicable portion of the HIPAA Rules, in accordance with 45 C.F.R. § 164.528. [164.504(e)(2)(ii)(G)]
- 3.8 return to HOSPITAL or destroy, within 20 business days of the termination of this Agreement, all PHI in CONTRACTOR's possession and retain no copies, transcripts or backups thereof. In the event that it is infeasible to return or destroy some PHI, CONTRACTOR agrees to inform HOSPITAL in writing within 10 business days, and to limit further Use or Disclosure of the PHI to those purposes that make return or destruction infeasible, and to maintain the protections specified in this Agreement for any retained information, for as long as the information is retained by CONTRACTOR. [164.504(e)(2)(ii)(J)]
- 3.9 Use internally and/or Disclose to CONTRACTOR's contractors, agents or other third parties, and request from HOSPITAL, only the Minimum Necessary PHI to perform or fulfill a specific function permitted or Required by Law or CONTRACTOR's Contractual Arrangements with HOSPITAL, utilizing Limited Data Sets wherever feasible and practicable, as further specified in Section 3.13 of this Agreement and as required by the HIPAA Rules. [164.502(b); 164.514(d)]
- 3.10 defer to HOSPITAL with respect to any notifications that may be necessary, as specified in Sections 4.3 and 4.4 of this Agreement, in the event of a Breach.
- 3.11 allow HOSPITAL, within ten (10) business days of a written request to CONTRACTOR by HOSPITAL, to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies, and procedures of CONTRACTOR relating to the Use or Disclosure of PHI pursuant to this Agreement and the HIPAA Rule.
- 3.12 With Respect to the Handling of Designated Record Sets, CONTRACTOR further agrees to:
 - a. provide access to the PHI for HOSPITAL or the Record Subject to whom such PHI relates (or his or her authorized representative), at the request of, and within the timeframe designated by the HIPAA Rules and HOSPITAL, in order to meet a request by such Individual under the HIPAA Rules, in accordance with 45 C.F.R. § 164.524. [164.504(e)(2)(ii)(E)]





- b. make any amendment(s) to the PHI required by the HIPAA Rules that HOSPITAL directs, at the request of and within the timeframe designated by the HIPAA Rules and HOSPITAL, in accordance with 45 C.F.R. § 164.526. [164.504(e)(2)(ii)(F)]
- 3.13 With Respect to the Use or Disclosure of Limited Data Sets, CONTRACTOR further agrees to:
 - a. limit the use of the Limited Data Set to the specific research, public health, or health care operations purposes for which the data was requested;
 - b. make no attempt to reconstruct the identity of the Record Subject from the Limited Data Set;
 - c. establish in advance what entities other than CONTRACTOR may be asked by CONTRACTOR to Use or Disclose the Limited Data Set, obtain agreements from such entities to abide by the specific restrictions applicable to CONTRACTOR with respect to Limited Data Sets (as set forth in this section 3.13), and certify compliance with this section to HOSPITAL in writing.

4. OBLIGATIONS OF HOSPITAL

- 4.1 HOSPITAL shall not request CONTRACTOR to Use or Disclose PHI in any manner that would violate this Agreement or the HIPAA Rules.
- 4.2 With regard to the Use or Disclosure of PHI by CONTRACTOR, HOSPITAL agrees to notify CONTRACTOR, in writing and in a timely manner, of any arrangements or limitations permitted or required of the HOSPITAL under the HIPAA Rules that will significantly impact the Use or Disclosure of PHI by CONTRACTOR under their Contractual Arrangements, including, but not limited to, restrictions on Use or Disclosure of PHI agreed to by the HOSPITAL pursuant to a Record Subject's approved request for additional privacy restrictions.
- 4.3 Notification to Individual. It is the sole responsibility of the HOSPITAL to notify Individuals of any Breach of PHI. At no time, is CONTRACTOR to contact or speak directly with any of HOSPITAL's Individuals who are the subject of any Breach of PHI. Any such inquiries should be directed to the HOSPITAL's Privacy Officer. CONTRACTOR shall cooperate with HOSPITAL as necessary to provide such notification and any details pertaining to any Breach of PHI.
- 4.4 Notification to Media. For a Breach of PHI involving more than 500 Individuals, it is solely the responsibility of HOSPITAL to notify the media and appropriate law enforcement and federal and state agencies as required by the HITECH Act, 45 C.F.R. § 164.406, and applicable state law. At no time is CONTRACTOR to contact or speak directly with the media without the prior





authorization of HOSPITAL. CONTRACTOR shall cooperate with HOSPITAL as necessary to gather information or provide such notification to the media.

5. WARRANTIES AND REPRESENTATIONS

Each Party represents and warrants to the other Party that all of its workforce members, officers, agents, representatives and contractors whose services may be used to fulfill obligations under this Agreement or other Contractual Arrangements are or shall be appropriately informed of their responsibilities and duties with respect to PHI and the HIPAA Rules, are qualified to render those services competently and in compliance with the HIPAA Rules, and are under legal obligation to each Party, respectively, to observe and comply with all applicable medical privacy and confidentiality requirements, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement and all other standards set by applicable federal and California law.

6. TERM AND TERMINATION

- 6.1 **Term.** This Agreement shall become effective when signed by authorized representatives of both Parties and shall continue in effect, unless specifically terminated as provided in this Section. In addition, certain provisions and requirements of this Agreement may survive its expiration or other termination.
- 6.2 Termination by HOSPITAL. If HOSPITAL determines that CONTRACTOR has breached a material term of this Agreement, HOSPITAL shall provide CONTRACTOR with written notice of the existence of a breach and afford CONTRACTOR an opportunity to cure said breach upon mutually agreeable terms. CONTRACTOR must provide an acceptable and effective plan to cure said breach to the satisfaction of HOSPITAL within 10 days of receiving notice. Failure to cure will be grounds for the immediate termination of this Addendum. [164.504(e)(2)(iii)]
- 6.3 Termination by CONTRACTOR. If CONTRACTOR determines that HOSPITAL has breached a material term of this Agreement, or that a material condition of performance under this Agreement has so changed that CONTRACTOR finds it impossible to comply with the new condition, CONTRACTOR may provide 60 days' notice of its intention to terminate this Agreement and any related Contractual Arrangements.
- 6.4 Effect of Termination. In the event of termination pursuant to this Section, CONTRACTOR agrees to return or destroy all PHI received from or created, transmitted, or maintained for HOSPITAL as specified in Section 3.8. Further, the obligation to indemnify the other party set forth in Section 7.1 shall survive the termination of this Agreement for any reason.
 - In the event that CONTRACTOR determines that returning or destroying a subset of the PHI is infeasible, CONTRACTOR shall provide to HOSPITAL notification of the conditions that make return or destruction infeasible. CONTRACTOR





shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such PHI.

7. INDEMNIFICATION AND INSURANCE

- Indemnification. The Parties agree to indemnify and hold harmless each other and each other's respective employees, agents and affiliated entities against any claim, damage or liability, including reasonable defense costs, that may result from any third party claim if and to the extent proximately caused by any breach of this Agreement by the other, as determined by a court, administrative body of competent jurisdiction, formal alternative dispute resolution process or good faith negotiated settlement, and provided that the party seeking indemnification furnishes to the other prompt written notice and requisite authority, information and assistance to defend, save that the Indemnifying Party may not make any admission of fault or liability on behalf of the other without the other Party's prior written permission.
- Insurance. CONTRACTOR, at its sole cost and expense, shall insure its activities in connection with this Agreement. Specifically, CONTRACTOR shall obtain, keep in force, and maintain insurance or equivalent programs of self-insurance with appropriate limits that shall cover losses that may arise from breach of this Agreement, breach of CONTRACTOR's security, or other unauthorized Use or Disclosure of PHI by CONTRACTOR. At HOSPITAL's request, CONTRACTOR shall provide copies of Certificates of Insurance, or other similar documentation satisfactory to HOSPITAL, prior to the effective date of this Agreement, and in such cases shall continue to update HOSPITAL with regard to changes in CONTRACTOR's chosen insurance carriers or coverage limits. It should be expressly understood, however, that the limits and coverage expressed therein shall in no way limit the liability of CONTRACTOR.

8. MISCELLANEOUS

8.1 Amendments. The Parties acknowledge that technology, best industry practices, and state and federal law regarding the privacy of PHI are rapidly evolving, and that amendment of this Agreement may be required to reflect such developments. Upon HOSPITAL's request, CONTRACTOR agrees to promptly enter into the negotiations with HOSPITAL concerning the terms of any necessary changes to this Agreement consistent with these developments, in order to maintain optimal privacy and confidentiality for the PHI that CONTRACTOR receives from or creates for HOSPITAL. This Agreement may not be modified, nor any provision hereof waived or amended, except in a writing duly signed by authorized representatives of the Parties.





- 8.2 Assignments/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, affiliated entities, successors and assigns. CONTRACTOR may not assign the rights or obligations under this Agreement without the express written consent of HOSPITAL.
- 8.3 Assistance in Litigation/Administrative Proceedings. Upon written request of either Party, and upon making arrangement to pay reasonable expenses incurred, the Parties agree to provide good-faith assistance, in the form of records, witness testimony, and other evidence as the requesting Party may reasonably deem necessary in order to defend against a third party judicial or administrative action or investigation, provided that such assistance would not unfairly prejudice the ability of that Party to defend itself in any pending or expected legal or administrative proceeding or investigation. This clause shall not have effect in cases of adversarial proceedings between the Parties, and under such circumstances the normal rules of discovery shall instead apply.
- Attorneys' Fees. If any legal action, suit or proceeding, including mediation, arbitration or other non-judicial proceeding, is commenced between CONTRACTOR and HOSPITAL regarding their respective rights and obligations under this Agreement, the prevailing Party shall be entitled to recover, in addition to damages or other relief, all costs and expenses, attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein, the term "prevailing Party" shall mean the Party that obtains the principal relief that it has sought by judgment. If the Party that commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other Party, such other party shall be deemed the prevailing Party.
- 8.5 **Dispute Resolution.** The Parties agree to attempt, in good faith, to resolve any breach or alleged breach that does not result in summary termination under Section 6.2 of this Agreement. Should such attempts fail to produce a mutually agreeable result within a reasonable period of time, the Parties agree to seek mediation before a mediator approved by, and in a process conducted under the applicable rules of, the American Arbitration Association before filing a lawsuit over the unresolved matters. Notwithstanding the foregoing, the Parties waive all rights to, and agree not to assert any right to, any trial by jury on any issues or disputes arising under or related to this Agreement.
- 8.6 General Interpretation. The Parties have negotiated the terms of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the





- Agreement. In addition, any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- 8.7 Governing Law. This Agreement shall be governed by the laws of the State of California. All disputes arising hereunder shall be adjudicated before the courts of the County of San Diego, California. The Parties hereby waive all objections to the exercise of personal jurisdiction or venue of said courts.
- 8.8 Merger. This Agreement and the respective Contractual Arrangements comprise the entire agreement between the Parties, with respect to the privacy of PHI and the ordering and termination of relationships that impact such concerns, and supersedes all prior discussions, negotiations, and arrangements.
- 8.9 **Notice**. Any notice to be given under this Agreement shall be in writing and delivered personally or sent by certified or registered mail or overnight delivery

(for HOSPITAL): Tri-

Tri-City Medical Center

4002 Vista Way Oceanside, CA 92056

Attn: Chief Executive Officer

(for CONTRACTOR):	 	

- 8.10 **Remedies.** The right to any redress, cure, indemnification, termination, or any other right conferred under this Agreement is not intended to be exclusive and exists in addition to any other rights or remedies available to either Party at law or in equity.
- 8.11 Severance. The invalidity or unenforceability of any part of this Agreement shall not affect the remaining provisions, and the Agreement shall be construed as if the invalid provisions were omitted.
- 8.12 Survival. The respective rights and obligations of the Parties under the provisions of this Agreement, solely with respect to PHI that CONTRACTOR retains in accordance with Sections 3.10, shall survive termination of this Agreement indefinitely. All of Section 3 shall survive termination of this Agreement with respect to retained PHI that comprises some or all of a Designated Record Set.
- 8.13 **Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective affiliated entities, successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 8.14 Waiver. All rights and obligations created under this Agreement shall survive any attempt, other than through a valid Amendment as per Section 8.1, to remove or modify them. No action or failure to act by either Party, other than the execution of a valid written Amendment, may waive any right or obligation to subsequently act,





refrain from acting, or command the action or inaction of the other Party, as applicable, as provided within this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective when signed by authorized representatives of both Parties.

For HOSPITA	AL .	For CONTRACTOR	
Ву:		Ву:	
Name:	Steve Dietlin	Name:	
Title:	Chief Executive Officer	Title:	
Date:		Date:	





HIPAA Business Associate - Data Use Application

Principal Recipient of Protected Health Information
Company Name and Contact:
Address:
Phone # Fax #
E-mail:
This Application is executed as part of the Business Associate Agreement, to reflect additional specifications relating to the Use or Disclosure of the Designated Data Set of Protected Health Information (PHI). This Application may be amended from time to time as needed.
1. The purpose of the information and how the Designated Data Set of PHI will be used to accomplish that purpose:
2. The specific purpose for the use and disclosure of this data:
3. Identification of who is intended to use and receive the data:
4. Safeguards that prevent unauthorized use or disclosure:





	5. The plan (how and when) to destroy the Designated Data Set	
meth addit other	6. Additional Terms. [This section may include specification method of transmission, use of an intermediary, use of digital signature additional security or privacy specifications, de-identification or resoluter additional terms.]	es or PKI, authentication, dentification of data and
7.	7. Person Completing This Application:	
	Signature:	
	Print Name:	
	Title:	
	Date Signed:	

HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA BUSINESS ASSOCIATE ADDENDUM ("Addendum") is entered into as of, 20 (the "Execution Date"), by and between Tri-City Healthcare District, a health care district organized under the Local Health Care District Law of the State of California ("Hospital")
and ("Contractor").
A. Hospital owns and operates a general acute care hospital that is located at 4002 Vista Way, Oceanside, California.
B. Hospital is a "covered entity" under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and, as such, must enter into so-called "business associate" contracts with its contractors that may have access to patient medical information in either paper or electronic form.
C. Pursuant to that certain Agreement by and between Hospital and Contractor, dated as of, 20 (the "Agreement"), Contractor may have access to patient medical information from Hospital.
D. Hospital and Contractor are committed to complying with HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111-05 ("HITECH Act") and their implementing regulations ("the HIPAA Regulations) as they become effective or as otherwise amended from time to time (collectively these changes, HIPAA and the HIPAA Regulations shall hereinafter be referred to as the "HIPAA Laws"), the California Medical Information Act ("CMIA"), contained in the California Civil Code Section 56 et seq., the Patient Access To Medical Records Act ("PAMRA") contained in the California Health and Safety Code, Section 123100 et seq., California Health and Safety Code Section 1280.15") and other California patient privacy laws.
NOW, THEREFORE, in consideration of the recitals, conditions and promises herein contained, the parties do hereby agree as follows:
1. <u>Defined Terms</u> .
(a) Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the HIPAA Laws. A reference in this Addendum to a section in the HIPAA Regulations, means the section of the Code of Federal Regulations (CFR) as in effect or as amended, and for which compliance is required.
(b) Unauthorized or Unlawful Access shall mean the inappropriate review or viewing of patient medical information without a direct need for diagnosis, treatment or other lawful Use as permitted by HIPAA, CMIA or by other statutes or regulations governing the lawful access, Use or Disclosure of medical information.
(c) Designated Data Set is a group of records, from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the Individual, and which is used to make decisions about the Individual.
(d) Data Use Application describes the purpose, controls and safeguards agreed to by the Contractor and Hospital.

-1-

Billing and Collecting. If Contractor provides billing and collecting services to Hospital or

otherwise conducts any Standard Transactions on behalf of Hospital, Contractor shall comply with this Section. Contractor shall comply with 45 CFR Parts 160 and 162 (the "Transaction Rule"), including: (a) Contractor

shall not change the definition, data condition, or use of a data element or segment in a standard of the

Transactions Rule (a "Standard"); (b) Contractor shall not add any data elements or segments to the maximum defined data set; (c) Contractor shall not use any code or data elements that are either marked "not used" in the Standard's implementation specification(s); and (d) Contractor shall not change the meaning or intent of the Standard's implementation specification(s).

3. <u>Contractor's Obligations</u>

- (a) Contractor acknowledges and agrees that all Protected Health Information that is created or received by Hospital and Disclosed or made available in any form, including paper record, audio recording, and electronic display by Hospital or its operating units to Contractor, or is created, received, maintained or transmitted by Contractor on Hospital's behalf, shall be subject to the Agreement and this Addendum.
- (b) Contractor shall not Use or Disclose Protected Health Information in any form, including electronic form ("PHI"), other than as permitted or required by this Addendum or required by law.
 - (c) Contractor shall not permit Unauthorized or Unlawful Access to PHI.
- (d) Except as otherwise limited in this Addendum, Contractor may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, Hospital as specified in the Agreement or for Contractor's internal operational purposes, provided that such Use or Disclosure would not violate the HIPAA Regulations or California law if done by Hospital.
- (e) The Contractor shall not further Disclose any PHI (including to subcontractors) received from the Hospital or maintained by the Contractor, unless permitted by this Addendum and, in such cases, only if such Disclosure is required or permitted under California law.
- (f) The Contractor shall not Disclose PHI to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out-of-pocket in full for the health care item or service to which the PHI solely relates.
- (g) Except as otherwise provided for in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. (See 45 C.F.R. §164.504(e)(4)(i)).
- (h) Except as otherwise provided for in this Agreement, Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it 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 the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached. (See 45 C.F.R. §164.504(e)(4)(ii)).
- (i) To the extent that Contractor is to carry out one or more of Hospital's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to Hospital in the performance of the obligations.
- 4. <u>Disclosure Accounting</u>. In the event that Contractor makes any Disclosures of PHI that are subject to the accounting requirements of 45 CFR Section 164.528, Contractor promptly shall report such Disclosures to Hospital in writing. Such notice shall include the name of the individual and company affiliation to whom the PHI was Disclosed and the date of the Disclosure. Contractor shall maintain a record of each such Disclosure, including the date of the Disclosure, the name and, if available, the address of the recipient of the PHI, a brief description of the PHI Disclosed and a brief description of the purpose of the Disclosure.

Contractor shall maintain this record for a period of six (6) years and make such records available to Hospital upon request in an electronic format so that Hospital may meet its Disclosure accounting obligations under 45 CFR Section 164.528.

- 5. Access to PHI by Individuals. Contractor shall cooperate with Hospital to fulfill all requests by Individuals for access to the Individual's PHI that are approved by Hospital. Contractor shall cooperate with Hospital in all respects necessary for it to comply with 45 CFR Section 164.524. If Contractor receives a request from an Individual for access to PHI, Contractor immediately shall forward such request to Hospital, who shall be solely responsible for determining the scope of PHI and Designated Record Set with respect to each request by an individual for access to PHI. If Contractor maintains PHI in a Designated Record Set on behalf of Hospital, Contractor shall permit any Individual, upon notice by Hospital, to access and obtain copies of the individual's PHI in accordance with 45 CFR Section 164.524. Contractor shall make the PHI available in the format requested by the Individual and approved by Hospital. If Business Associate maintains the PHI in a Designated Record Set in electronic form and an Individual requests a copy of such information in electronic format, Business Associate shall provide such information in electronic format to Hospital in order for it to comply with its obligation. Contractor shall not charge Hospital or the Individual any fees for such access to PHI. If Contractor does not hold any information as part of a Designated Record Set, this Section shall not apply to Contractor.
- 6. Amendment of PHI. Contractor shall incorporate all amendments to PHI received from Hospital within five (5) business days of receipt. Contractor shall provide written notice to Hospital within five (5) business days of completing such amendment(s). Such notice shall confirm that Contractor has made the amendment(s) to PHI as directed by Hospital and shall contain any additional information necessary for Hospital to provide adequate notice to the Individual in accordance with 45 CFR Section 164.526. If Contractor does not hold any information as part of a Designated Record Set, this Section shall not apply to Contractor.
- 7. Access to Contractor's Books and Records. Contractor shall make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by Contractor on behalf of Hospital, available to the Secretary of the Department of Health and Human Services ("Secretary") for purposes of determining Hospital's compliance with the HIPAA Laws. Contractor shall provide to Hospital a copy of any PHI that Contractor provides to the Secretary concurrently with providing such PHI to the Secretary. Contractor also shall make its internal practices, books and records available within five (5) business days of a request by Hospital for inspection for purposes of determining compliance with this Agreement.
- 8. <u>Security Safeguards</u>. Contractor shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized Use or Disclosure of PHI. Contractor shall require any agents, affiliates, subsidiaries or subcontractors, with access to electronic PHI related to Hospital in any way, to agree in writing to the same requirements under this Section. Moreover, Contractor shall implement administrative, physical, and technical safeguards and policy, procedure, and documentation requirements consistent with the requirements of 45 CFR Sections 164.308, 164.310, 164.312, and 164.316.
- 9. Reporting and Mitigating. Contractor shall immediately report, but in no event later than 24 hours, any Security Incident including any Unauthorized or Unlawful Access, Use or Disclosure of PHI or Breach of Unsecured PHI not provided for or permitted by this Addendum of which the Contractor becomes aware. Moreover, in the event that Contractor becomes aware that PHI has been or reasonably believes has been accessed, acquired or Disclosed as a result of a "Breach," or Unauthorized or Unlawful Access as those terms are defined by the HIPAA Laws or Section 1280.15, Contractor will notify Hospital of the Breach and/or Unauthorized or Unlawful Access, Use or Disclosure, including the identification of each Individual who has been or is reasonably believed to have been affected thereby. Contractor's notification to Hospital shall be provided in accordance with HIPAA Laws and Section 1280.15 and guidance as it may be provided by the

Secretary and the California Office of Health Information Integrity. Contractor shall use its best efforts to mitigate the deleterious effects of any Unlawful Access, Use or Disclosure of PHI not authorized by this Addendum or any Security Incident.

10. Term and Termination.

- (a) The Term of this Addendum shall be effective as of the Execution Date and shall terminate when all of the PHI provided by Hospital to Contractor, or created or received by Contractor on behalf of Hospital, is destroyed or returned to Hospital, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with Section 11 below.
- (b) If Hospital becomes aware of any material breach of this Addendum by Contractor, Hospital shall provide Contractor with written notice of such breach and such breach shall be cured by Contractor within thirty (30) business days of such notice. If such breach is not cured with such time period, Hospital shall immediately terminate this Addendum.
- (c) If Contractor becomes aware of any material breach of this Addendum by Hospital, Contractor shall provide Hospital with written notice of such breach and such breach shall be cured by Hospital within thirty (30) business days of such notice. If such breach is not cured with such time period, Contractor shall immediately terminate this Addendum.
- (d) Contractor acknowledges and agrees that Hospital may be required by HIPAA Laws to report a Breach to the Secretary of the U.S. Department of Health and Human Services and Unauthorized or Unlawful Access, Use or Disclosure of PHI to the State.
- (e) The Agreement shall automatically terminate upon termination of this Addendum for any reason whatsoever.

11. Effect of Termination.

- (a) Upon termination or expiration of this Addendum, Hospital shall direct Contractor to either return or destroy all PHI that Contractor obtained, created or maintained pursuant to the Agreement on behalf of Hospital. If Hospital determines at that time that the return or destruction of PHI is not feasible, Contractor shall extend the protections provided under this Addendum to such PHI, and limit further Use or Disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible.
- (b) Upon termination or expiration of this Addendum, Contractor shall recover all PHI that is in the possession of Contractor's agents, affiliates, subsidiaries or subcontractors. If Contractor believes at that time that it is infeasible for the Contractor to recover all PHI in the possession of Contractor's agents, affiliates, subsidiaries or subcontractors, Contractor shall provide written notice to Hospital regarding the nature of the unfeasibility. Upon a determination by Hospital that such recovery is infeasible, Contractor shall require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required of Contractor hereunder. If Hospital determines that it is feasible to make such recovery, Contractor shall recover all PHI in the possession of Contractor's agents, affiliates, subsidiaries or subcontractors.
- (c) If Contractor or Contractor's agents, affiliates, subsidiaries or subcontractors retain any PHI pursuant to this Section 11, the terms of this Addendum shall continue to apply to the PHI retained by Contractor or any of Contractor's agents, affiliates, subsidiaries or subcontractors, even after termination of the Agreement.

- 12. <u>Prohibition of Sale of PHI.</u> Contractor may not directly or indirectly receive remuneration in exchange for any PHI without a valid Authorization specifically indicating that the PHI may be sold to the entity receiving the PHI unless the sale is otherwise authorized by the HIPAA Laws.
- 13. <u>Indemnification</u>. Each party, to the extent allowable under the California Tort Claims Act, shall indemnify, defend and hold harmless the other party and its agents, employees, contractors, officers and directors against: (i) any and all liability arising out of such party's failure to comply with the terms of this Addendum, and any injury, loss, fines, claims, or damages arising from the negligent operations, acts, or omissions of such party or its employees relating to or arising out of this Addendum; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of the other party in connection with the defense of such claims.
- 14. Contractor's Compliance with HIPAA. Hospital makes no warranty or representation that compliance by Contractor with this Addendum, the HIPAA Laws or California law will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized Use or Disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI.
- 15. <u>Continuing Agreement</u>. Except as expressly modified by this Addendum, the Agreement shall continue in full force and effect. In the event of any conflict between any provision of this Addendum and any provision of the Agreement, the provision of this Addendum shall control.
- 16. <u>Assignment; Binding Effect</u>. This Addendum shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Unless otherwise provided in the Agreement, Contractor may not assign the rights or obligations under the Agreement without the express written consent of Hospital; however, Hospital may assign its rights and obligations under this Agreement to any successor or affiliated entity without the consent of Contractor.
- 17. Affiliates, Agents, Subsidiaries and Subcontractors. Contractor shall require any agents and subcontractors which creates, receives, maintains or transmits PHI related to Hospital on its behalf, to agree in writing to the same Use and Disclosure restrictions and conditions imposed on Contractor by this Addendum including the requirement that such agents and subcontractors implement reasonable and appropriate administrative, physical and technical safeguards to protect such PHI. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract to such agents and subcontractors including the requirement to report Security Incidents, Breaches and Unauthorized or Unlawful Access, Use and Disclosures to Business Associate. Unless the Agreement permits Contractor to subcontract its services, Contractor shall not subcontract any of its services under the Agreement without first obtaining Hospital's prior written consent.
- 18. <u>Compliance with Laws</u>. The parties shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, applicable to the performance of the Agreement and this Addendum.
- 19. Governing Law. Unless provided otherwise in the Agreement, this Addendum shall be construed in accordance with and governed by the laws of the State of California, except the conflicts of laws provisions which would require the application of the laws of any other jurisdiction.
- 20. <u>Headings</u>. The headings in this Addendum are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

- 21. <u>No Third-party Beneficiary Rights</u>. Unless provided otherwise in the Agreement, the parties do not intend to confer and this Addendum shall not be construed to confer any rights or benefits to any person, firm, physician, corporation or entity other than the parties.
- 22. <u>Data Ownership</u>. Contractor acknowledges and agrees that all PHI that Contractor obtains, creates or maintains pursuant to the Agreement, on behalf of Hospital or for Contractor's internal use, is the property of Hospital and Contractor has no ownership rights with respect thereto.
- 23. <u>Severability</u>. If any provision of this Addendum is determined to be illegal or unenforceable, that provision shall be severed from this Addendum and/or the Agreement, as applicable, and such severance shall have no effect upon the enforceability of the remainder of the Agreement.
- 24. <u>Counterparts</u>. This Addendum may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
- 25. <u>Data Use Application</u>. If Contractor requests a "Designated Data Set" from Hospital, Contractor must complete a Data Use Application (Instructions and Application attached to this Addendum) and submit a completed Data Use Application with this signed Addendum. The Data Use Application may be modified or amended by mutual agreement of the parties at any time without amending the Agreement or this Addendum.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the Execution Date.

HOSPITAL

Tri-City Healthcare District, a health care district organized under the Local Health Care district Law of the State of California

By:_	
-	Chief Executive Officer
CON	ITRACTOR
Signa	ature:
Print	Name:
Title	





Instructions - Data Use Application Tri-City Healthcare District ("Hospital")

Hospital may Disclose a Designated Data Set of Protected Health Information (PHI) according to a Business Associate Agreement, if Hospital obtains satisfactory assurance that the recipient of the PHI will Use or Disclose the information only for limited purposes.

Please complete the Data Use Application, explaining your receipt and use of Hospital PHI, by answering the following questions:

- State the purpose of the information and how the Designated Data Set of PHI will be used to accomplish that purpose.
- Provide the specific purpose for the Use and Disclosure of this data.
- Identify who can Use and receive the data.
- Provide an adequate assurance of safeguards that prevent unapproved Use or Disclosure.
- Identify your plan (how and when) to destroy the Designated Data Set of PHI.



ADMINISTRATIVE POLICY-MANUAL COMPLIANCE

ISSUE DATE:

03/03

SUBJECT: Disclosure of Information to Public

and Media

REVISION DATE(S): 01/06, 05/09, 08/12

POLICY NUMBER: 8610-524

Administrative Compliance Content Expert Approval:

05/19

Administrative Policies & Procedures Committee Approval:

06/1505/19

Organizational Compliance Committee Approval:

n/a

Medical Executive Committee Approval:

n/a

Audit, Compliance and Ethics Committee Approval:

08/15

Board of Directors Approval:

08/15

PURPOSE: A.

The purpose of this Policy is to provide guidance on the limitation of Disclosures that may be made by Tri-City Healthcare District (TCHD) of patient Protected Health Information (PHI) to the general public, including the media.

B. **DEFINITION(S):**

- 1. Authorization: The written form that complies with HIPAA and state law that is obtained from the Individual or his or her Personal Representative in order for TCHD to Use and Disclose PHI.
- Business Associate: a-A person or organization who, on behalf of TCHD, performs certain 2. functions or activities involving the Use or Disclosure of PHI or services that require the Business Associate to create, receive, maintain or transmit PHI on behalf of the TCHD or where TCHD needs to Disclose PHI to Business Associates for the services.
- 3. Business Associate Addendum or BAA: is an An Addendum to an applicable Services Agreement between the District and a Business Associate that outlines the specific obligations of the Business Associate related to the Use or Disclosure of District PHI.
- 4. <u>Disclosure:</u> the The release, transfer, provision of, access to or divulging of PHI outside TCHD.
- Protected Health Information (PHI): individually-Individually identifiable health information 5. transmitted or maintained in paper or electronic form that is created or received by TCHD AND
 - Relates to the past, present or future physical or mental health or condition of an individual; OR
 - b. Relates to the provision of health care to an individual; OR
 - Relates to the past, present, or future payment, AND C.
 - Identifies the individual OR with respect to which there is a reasonable basis to believe the d. information can be used to identify the individual.
- Services Agreement: An agreement between the TCHD and a third party whereby the third party 6. performs a function, activity or service on behalf of TCHD. Services Agreements that require TCHD to Disclose PHI for such functions, activities or services require Business Associate Addendums.
- 7. Use: the sharing, application, utilization, examination or analysis of PHI within TCHD.
- Workforce Member: employees Employees, Medical Staff and Allied Health Professionals 8. (AHP), volunteers, trainees, and other persons whose conduct, in the performance of work for TCHD is under the direct control of TCHD whether or not they are paid by TCHD.

C. POLICY:

TCHD shall comply with the restrictions imposed on it by HIPAA related to Disclosure of patient information to the public, including the media.



- 2. The Public Information Officer (PIO) will coordinate responses to requests from the media concerning patients with the Privacy Officer.
- 3. The Privacy Officer is responsible for making determinations involving Disclosures of patient information to the public, including the media.

D. PROCEDURES:

- Requests for Information
 - HIPAA is more restrictive than California law regarding the timing and scope of information that may be provided to the public, including the media, concerning patients. TCHD shall follow the stricter requirements in HIPAA.
 - b. The PIO will coordinate all responses to media requests involving PHI with the Privacy Officer. The Privacy Officer will identify whether limited medical condition information may be disclosed or whether an Authorization from the patient is required for a response involving disclosure of patient information to the media.
 - c. TCHD may only release information about a patient if the inquiry specifically contains the patient's name. If an inquiry specifically contains a patient's name, then only limited medical condition descriptions and location information can be released as provided in this policy.
 - d. The following activities always require prior written Authorization from the patient:
 - Making detailed statements (beyond one-word descriptions as provided in D.1.d below) regarding the patient's medical condition or injury, his or her treatment, prognosis, etc.
 - ii. Photographing or videotaping patients; and
 - iii. Interviewing patients; and
 - iv. Any other Disclosure of patient information not specifically permitted by this Policy.
 - e. Patient privacy rights continue to apply after a patient's death. Inquiries must be handled in accordance with this Policy. If a Disclosure is only permitted with an authorization, the deceased patient's Personal Representative must provide a written Authorization.
 - f. Except for the limited Disclosures permitted under D.1.b., Disclosures to the Public, including the Media, require a patient (or Personal Representative) Authorization, the Privacy Officer shall be responsible for making all other determinations involving Disclosures to the Public, including the Media. The Privacy Officer may consult with legal counsel as necessary and appropriate.

2. Media Access to Patients

- a. All requests for patient information by the media during normal business hours will be referred to the PIO. The PIO shall confer with the Privacy Officer on all such requests.
- b. All requests for patient information made by the media outside of normal business hours will be routed through the PBX operator. If deemed not urgent, the Administrative Supervisor will ask the reporter to call back during normal business hours.
- c. All contacts from the media are required to go through the PIO. Reporters who contact staff other than the PIO will be verbally reminded up to three times to contact only the PIO. The unauthorized inquiries will be documented. After three warnings, staff will not acknowledge inquiries by reporters who have received three warnings.
- d. The PIO shall accompany media representatives at all times when they are in TCHD facilities.
- e. Media requests for writings or records must be sent as official Public Records Act Requests (PRR).
- f. TCHD reserves the right to deny any media representatives access to a patient, physician, employee or volunteer if it is determined that the presence of media (including photographers, videographers, reporters and/or other media staff) could aggravate the patient's condition or interfere with hospital care and business.
- 3. Patient Contacts With the Media
 - a. TCHD must continue to protect a patient's PHI if a patient or the patient's family member contacts the media and initiates a discussion, complaint or accusation involving their medical condition, treatment at TCHD, or other related matters.

Administrative Policy Manual -- Compliance Disclosure of Information to Public and Media -- Policy 8610-524 Page 3 of 3

b. While TCHD may attempt to obtain an Authorization from the patient to respond to the media, if no Authorization is obtained, TCHD may not release information. In the event TCHD wishes to respond to such media inquiries, it should consult with legal counsel before doing so.

E. <u>REFERENCE(S) LIST:</u>

- 1. 45 Code of Federal Register (CFR) Section 160.103
- 2. 45 CFR Section 164,510
- 3. 45 CFR Section 164.530(e)