

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is made and entered into as of the ___ day of _____, 2008, by and between **eHEALTHTECH MARKETING, L.L.C.** (“Billing Company”) and _____ (“Client”).

RECITALS:

A. Client is a health care provider, as defined by the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, including the Privacy Standards (set forth at 45 CFR §164.500 et seq.) (the “Privacy Standards”) and the Security Standards (set forth at 45 CFR §164.302 et seq.) (the “Security Standards”) (collectively “HIPAA”). As a result, Client is also a Covered Entity, as defined by HIPAA.

B. Billing Company and Client are parties to a certain Billing Services Agreement, of even date herewith (the “Billing Agreement”), pursuant to which Billing Company performs certain services in connection with the billing and collection of amounts owed to Client for health care services provided by Client (“Services”).

C. In connection with its provision of Services for Client, Billing Company receives or obtains protected health information (“PHI”), as defined by HIPAA, from Client or reviews or creates PHI for Client regarding Client’s patients (“Client PHI”). As a result, Billing Company is a Business Associate of Client, as defined by the HIPAA Privacy Standards and Security Standards.

D. At least some of the PHI that Billing Company creates, receives, maintains or transmits on behalf of Client is created, received, maintained or transmitted in or through “Electronic Media”, as defined by HIPAA (“collectively, “E PHI”).

E. In order to comply with the Privacy Standards and Security Standards, Client is required to obtain assurance from Billing Company that Billing Company will comply with the requirements of the Privacy Standards and Security Standards applicable to Business Associates, all as more fully described below, if Client desires to continue to disclose Client PHI and E PHI to Billing Company.

F. Given that Client desires to continue to disclose Client PHI and E PHI to Billing Company, Client will need to obtain such assurance from Billing Company.

G. Billing Company desires to provide such assurance to Client.

H. In addition, Billing Company desires to obtain, and Client desires to provide, assurance that Client will comply with HIPAA, to the extent that such compliance affects Billing Company’s (i) ability to perform the Services for Client, and/or (ii) ability to meet its obligations to Client under this Agreement.

TERM AND CONDITIONS

1. Obligations of Billing Company. Billing Company agrees that it will comply with the requirements of the HIPAA Privacy Standards and Security Standards applicable to Trading Partners and Business Associates, including the following obligations:

(A) Use and Disclosure of PHI. Billing Company agrees that it will not use or disclose Client PHI, other than to perform the Services, as otherwise expressly permitted by the terms of this Agreement or as required or permitted by law; provided, however, that Billing Company may use and disclose Client PHI: (i) to manage and administer its business; (ii) to perform data aggregation services for Client (and other clients); and (iii) to create de-identified information, subject to the requirements of HIPAA regarding the de-identification of information. Billing Company agrees to comply with any and all restrictions on the use of Client PHI requested by a patient of Client, agreed to by Client and communicated to Billing Company by Client; provided, however, that in the event that Billing Company is unable or unwilling to comply with any such restriction, Billing Company shall notify Client of such fact and, upon Client's receipt of such notice, Billing Company shall be relieved of any and all further obligation to perform Services for Client in connection with such patient, provided that Billing Company return to Client or destroy any and all Client PHI in Billing Company's possession or control regarding such patient.

(B) Safeguards. Billing Company represents and warrants that it will develop and implement appropriate safeguards to prevent the use or disclosure of Client PHI for purposes other than as set forth in this Agreement. Further, Billing Company represents and warrants that it will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI it creates, receives, maintains or transmits on behalf of Client ("Client EPHI"), as required under the HIPAA Security Standards. Billing Company will provide Client with such information concerning such safeguards as Client may from time to time request.

(C) Accounting of Disclosures. In fulfillment of the requirements of 45 CFR 164.528, Billing Company will maintain a record of all disclosures of Client PHI made for reasons other than the provision of the Services and will provide the following information regarding any such disclosure to Client or to the person whose PHI was disclosed ("Affected Person"), upon the request of Client:

- (i) The date of such disclosure;
- (ii) The name and, if known, the address of the recipient of such PHI;
- (iii) A copy of the request for disclosure, if any, accompanied by any necessary consents or authorizations;
- (iv) A brief description of the PHI disclosed; and

(v) A statement that would reasonably inform Affected Person of the purpose of the disclosure.

Further, Billing Company agrees to notify Client immediately upon discovery of any unauthorized use or disclosure of Client PHI. Finally, Billing Company agrees to notify Client immediately of any “Security Incident”, as defined in the HIPAA Security Standards, affecting Client EPHI of which Business Associate becomes aware.

(D) Disclosures to Workforce and/or Third Parties. Billing Company agrees to require its employees, agents and independent contractors (“Workforce”) to adhere to the restrictions and conditions regarding Client PHI and Client EPHI contained in this Agreement, including, without limitation, the following:

(i) Billing Company agrees not to disclose Client PHI to any member of its Workforce, unless Billing Company has advised such person of Billing Company’s obligations under this Agreement and the consequences of a violation of these obligations. Billing Company agrees to take disciplinary action against any member of its Workforce that uses or discloses Client PHI in violation of this Agreement.

(ii) Except as otherwise authorized under this Agreement, Billing Company will not disclose Client PHI to any third party without first obtaining the written approval of Client. In addition, Billing Company will not disclose Client PHI to any third party without first obtaining the written agreement of such third party to be bound by the requirements of this Agreement for the express benefit of Billing Company and Client. Finally, Billing Company will not provide any Client EPHI to any third party, including a subcontractor, unless such third party agrees to implement reasonable and appropriate safeguards to protect such EPHI.

(iii) Any use of Client PHI by Billing Company’s Workforce or disclosure of Client PHI to Billing Company’s Workforce or to third parties must be limited to the minimum amount of Client PHI necessary to achieve the purpose for such use or disclosure.

(E) Access to Records by Subject of Records. Billing Company agrees to notify Client immediately in the event Billing Company receives a request from a person identified in any Client PHI (“Subject”), or such person’s legal representative (“Legal Representative”), to review any records in Billing Company’s possession or control regarding the Subject (“Subject PHI”). In fulfillment of the requirements of 45 CFR 164.524, Billing Company agrees to make available to Client, or at the request of Client, to a Subject or such Subject’s Legal Representative, for their review, any Subject PHI maintained by Billing Company in a “Designated Record Set”, as defined by HIPAA.

(F) Amendment to PHI. Billing Company agrees to notify Client immediately in the event Billing Company receives a request from a Subject to amend or otherwise modify any Subject PHI in Billing Company’s possession or control. In fulfillment of the

requirements of 45 CFR 164.526, Billing Company agrees that, at the request of Client, it will make any amendments to Subject PHI maintained by Billing Company in a “Designated Record Set” that the Client directs or authorizes pursuant to 45 CFR 164.526.

(G) Government Access to Records. Billing Company agrees to make its policies, books and records relating to the use and disclosure of Client PHI available to the Secretary of the U.S. Department of Health and Human Services or his or her designee for the purpose of determining whether Client is in compliance with HIPAA requirements.

(H) Disposition of Records upon Termination. Billing Company agrees to return to Client or otherwise destroy all Client PHI in its possession or control upon termination of this Agreement. If such return or destruction of records is not feasible, Billing Company shall continue to extend the protections of this Agreement to such Client PHI and limit any further use of Client PHI to those purposes that make the return or destruction of such Client PHI infeasible.

2. Obligations of Client. Client agrees that, in connection with the performance of the Services by Billing Company, Client shall:

(A) Privacy Notice. Client shall provide each of its patients with a Notice of Privacy Practices (“Privacy Notice”). The Privacy Notice shall identify the potential uses and disclosures of a patient’s PHI that Client may make, including, without limitation, the use of such PHI for billing and collection purposes and disclosure of such PHI to a Billing Company or other third-party in connection with such billing and collection activities. Client shall use its good faith efforts to have each patient acknowledge, in writing, its receipt and review of the Privacy Notice.

(B) Notification of Restrictions on Use of PHI. Client shall notify Billing Company immediately of any restrictions on the use of any Client PHI requested by a patient of Client and agreed to by Client. Client shall provide Billing Company with sufficient information regarding any such restriction to enable Billing Company to determine whether it is able or willing to comply with such restriction.

(C) Notification of Disclosure of Subject PHI to Subject. Client shall notify Billing Company immediately in the event Client desires Billing Company to disclose any Subject PHI maintained by Billing Company in a Designated Record Set to the Subject or the Subject’s Legal Representative.

(D) Notification of Amendment to Subject PHI. Client shall notify Billing Company immediately in the event Client desires Billing Company to amend or otherwise modify any Subject PHI maintained by Billing Company in a Designated Record Set.

3. **Term.** The parties' obligations under this Agreement shall commence on the date of this Agreement and shall continue until such time as Billing Company ceases to provide Services for Client.

4. **Termination.** In the event of a material breach by either party ("Breaching Party") of any of its obligations under this Agreement, the other party ("Non-Breaching Party") may terminate the Billing Agreement and Billing Company's continued provision of Services for Client under the Billing Agreement immediately, provided that the Non-Breaching Party has first notified the Breaching Party, in writing, of such breach and that the Breaching Party has not cured such breach within thirty (30) days after its receipt of such notice.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE RIGHT OF THE NON-BREACHING PARTY TO TERMINATE THE BILLING AGREEMENT AND BILLING COMPANY'S CONTINUED PROVISION OF SERVICES FOR CLIENT UNDER THE BILLING AGREEMENT PURSUANT TO THIS SECTION SHALL BE THE NON-BREACHING PARTY'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF THE BREACHING PARTY'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND IN NO EVENT SHALL THE BREACHING PARTY BE LIABLE TO THE NON-BREACHING PARTY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ORDINARY DAMAGES, COMPENSATORY DAMAGES, SPECIAL DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES OR PUNITIVE DAMAGES, ALLEGED TO HAVE RESULTED FROM SUCH BREACH.

5. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when personally delivered or two (2) days after deposited in the United States mail, certified mail, return receipt requested, and addressed to the appropriate party at the address listed below.

6. **No Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the parties' intent that nothing contained in this Agreement give rise to any right or cause of action, contractual or otherwise, in or on behalf of any person whose PHI is used or disclosed pursuant to this Agreement or any person who qualifies as a personal representative of such person.

7. **Choice of Law.** This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Missouri.

8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective heirs, assigns, and successors in interest.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to their obligations to each other relative to the Privacy Standards and Security Standards under HIPAA.

10. **Modification.** No amendment or additions to this Agreement shall be binding unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

Billing Company

eHealthTech Marketing, L.L.C.
239 Katherine Drive
Flowood, MS 39232

By: _____

Title: _____

Address: _____

Client

By: _____

Title: _____

Address: _____
