

## PROTECTED HEALTH INFORMATION AGREEMENT

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and

GE

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This Protected Health Information Agreement ("Agreement"), effective on the last signature date below, is entered into by and between General Electric Company and its affiliates ("GE"), and \_\_\_\_\_ with an address at \_\_\_\_\_, on behalf of itself and its affiliates ("Supplier") (each a "Party" and collectively the "Parties").

### **1. BACKGROUND AND PURPOSE.**

- 1.1 The Parties have entered into, and may in the future enter into, one or more agreements that require Supplier: (1) to be provided with, have access to, and/or create Protected Health Information (or "PHI," as defined below in Section 2), and/or (2) to access and manage Information Systems, tools, hardware, conduits and technologies that process or have the potential to process PHI (the "Supplier Agreement(s)"), to provide certain services on GE's behalf and/or on behalf of one or more covered entities for whom GE is a Business Associate (each, a "Covered Entity") that is subject to the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191 (Aug. 21, 1996), its implementing regulations, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") and its implementing regulations (collectively, "HIPAA").
- 1.2 GE is legally and contractually obligated to the Covered Entities to appropriately protect and safeguard all PHI in accordance with HIPAA. This Agreement governs Supplier's receipt, Use, Disclosure, and creation of PHI, as well as access to, management of, and control of Information Systems, tools, hardware, conduits and technologies that process or have the potential to process PHI under the Supplier Agreements and supplements and/or amends the Supplier Agreements as required in order to allow both parties to comply with HIPAA.

### **2. DEFINITIONS.**

- 2.1 Capitalized terms used in this Agreement, but not otherwise defined herein, shall have the same meaning as the meaning ascribed to those terms in HIPAA currently in effect or as hereafter amended.
- 2.2 "Covered Entity" means (1) a health plan; (2) a health care clearinghouse; or (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by Subchapter C of 45 C.F.R. Part 160 for whom GE is a Business Associate, as that term is defined in 45 C.F.R. § 160.103.
- 2.3 "PHI" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 160.103, limited to the information created or received by Supplier from or on behalf of Covered Entity or GE, including, but not limited to electronic PHI.
- 2.4 "Information Systems" means an interconnected set of information resources under the same direct management control that shares common functionality. An Information System normally includes hardware, software, information, data, applications, communications, and people.

### 3. **OBLIGATIONS OF SUPPLIER WITH RESPECT TO PHI.**

In order that the Parties can achieve and maintain compliance with the requirements of HIPAA, Supplier agrees to the following:

- A. not to Use and Disclose PHI other than as permitted or required by this Agreement, or as Required By Law, and not Use or Disclose PHI in any manner that would violate the requirements of Subpart E of 45 C.F.R. Part 164, if done by GE; provided Supplier may, subject to the terms of this Agreement, Use and Disclose PHI to the extent expressly permitted and required under the applicable Supplier Agreement(s) solely to perform its obligations as set forth in the such Supplier Agreement(s). If Use of PHI to create de-identified information is necessary for Supplier to fulfill its obligations under the Supplier Agreement(s), such de-identification must be consistent with the standards set forth at 45 C.F.R. § 164.514. Supplier will not (1) Use PHI to provide data aggregation services, or (2) de-identify PHI for purposes other than as necessary to carry out its obligations under the Supplier Agreement(s). Notwithstanding the foregoing, nothing in this Agreement shall be construed to prohibit Supplier's disclosure to GE of PHI obtained from GE or created or obtained on behalf of GE.
- B. limit its Uses and Disclosures of, and requests for, PHI (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases, subject to the requirements of 45 C.F.R. § 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the Use, Disclosure or request.
- C. use reasonable and appropriate safeguards and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent Use or Disclosure of PHI, except as provided for by this Agreement.
- D. use reasonable and appropriate administrative, physical and technical safeguards to protect the Confidentiality, Integrity and Availability of the electronic PHI that it receives, maintains, creates, or transmits to or on behalf of GE in compliance with HIPAA, including but not limited to 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316. This includes adhering to applicable guidance published by the U.S. Department of Health and Human Services ("HHS") on appropriate safeguards.
- E. require all of its vendors, subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of Supplier to agree, in writing, to adhere to the same restrictions and conditions with respect to such PHI that apply to Supplier pursuant to this Agreement, subject to GE's prior written approval of such vendors, subcontractors and agents.
- F. make available Supplier's records, books, agreements, internal practices, policies and procedures relating to the Use or Disclosure of PHI received from, or created or received by Supplier on behalf of GE, to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining the Parties' compliance with Subpart E of 45 C.F.R. Part 164.
- G. make available to GE or Covered Entity, as may be requested by GE, the PHI in Supplier's possession that is required for Covered Entity to provide an accounting of Disclosures to an Individual under 45 C.F.R. § 164.528 (including, without limitation, a Disclosure permitted under 45 C.F.R. § 164.512), within five (5) business days from the receipt of a request from Covered Entity or GE.
- H. if, and to the extent, Supplier maintains a Designated Record Set of Covered Entity, within five (5) business days from the receipt of a request from the Covered Entity or GE for the amendment of an Individual's PHI contained in the Designated Record Set, Supplier shall provide such information to the Covered Entity or GE, as may be requested by GE, for amendment and shall also incorporate any such amendments in the PHI maintained by Supplier as required by 45 C.F.R. § 164.526.
- I. if, and to the extent that Supplier maintains a Designated Record Set of Covered Entity, within five (5) business days of receipt of a written request by the Covered Entity or GE for access to PHI about an Individual contained in the Designated Record Set, make available to the Covered Entity or GE, as

may be requested by GE, such PHI for so long as Supplier maintains such information in the Designated Record Set. If Supplier receives a request for access to PHI directly from an Individual, Supplier shall direct the Individual to contact Covered Entity or GE directly.

- J. mitigate, to the extent practicable, any harmful effects from any Use or Disclosure of PHI by Supplier not permitted by this Agreement.
- K. notify the designated privacy contact of GE of any Use or Disclosure of PHI by Supplier not provided for by this Agreement, including Breaches of Unsecured PHI in accordance with this Agreement.
- L. provide the following information to GE immediately, but not later than two (2) business days following the discovery of a Breach of Unsecured PHI:
  - (a) the date and description of the Breach of Unsecured PHI (as governed by 45 C.F.R. § 164.404);
  - (b) the date of the discovery of the Breach of Unsecured PHI (which shall be deemed to have occurred as of the first day on which such Breach is known to Supplier (including any person, other than the individual committing the Breach, who is an employee, officer, or other agent of the Supplier, as determined in accordance with the federal common law of agency) or, by exercising reasonable diligence, should reasonably have been known to Supplier);
  - (c) a description of the types of Unsecured PHI that were involved (e.g., name, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information);
  - (d) the name and contact information (e.g., mailing address, street address, phone number, email address) of each Individual whose Unsecured PHI has been, or is reasonably believed by Supplier to have been, accessed, acquired, or disclosed during such Breach;
  - (e) a brief description of what Supplier has done or is doing to investigate the Breach of Unsecured PHI, mitigate harm to the Individual(s) impacted by the Breach, and protect against future Breaches; and
  - (f) any other details requested by GE for purposes of, including without limitation, completing an assessment of the risk of harm to the Individual and/or complying with 45 C.F.R. § 164.410.
- M. Supplier shall not notify appropriate Individuals whose Unsecured PHI has been disclosed, as well as the Secretary and the media, unless instructed to do so by GE in writing.
- N. Supplier agrees to pay all costs for notification and any associated mitigation incurred by GE and Covered Entity, including, but not limited to, credit monitoring, if it is determined that a Breach has occurred.
- O. Supplier agrees to promptly: (a) establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches in the time and manner reasonably requested by GE, and (b) provide information regarding the Breach as may be requested by GE (including providing GE with periodic written updates of the findings from the investigation and a description of the mitigation steps and procedures).
- P. Supplier agrees to notify GE, and, upon GE's request, notify Covered Entity, of all Security Incidents of which Supplier becomes aware as follows: (a) successful Security Incidents shall be reported immediately, but in no case later than two (2) business days following discovery; and (b) Unsuccessful Security Incidents (as defined below) shall be provided in summary form to GE every 30 days. For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Supplier's firewall, port scans, routine unsuccessful log-on attempts,

denials of service and any combination of the above, so long as no such event may reasonably result in a compromise to the Information System, tools, hardware, conduit, technology, and/or unauthorized access, Use or Disclosure of electronic PHI.

- Q. To the extent Supplier is engaged by GE to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Supplier agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- R. Upon notification by GE, Supplier agrees to comply with any arrangements, or changes in arrangements, between GE and the Covered Entity on whose behalf the PHI ultimately is created, Used and/or Disclosed that may impact the Use and/or Disclosure of that PHI by Supplier under this Agreement.
- S. Maintain policies and procedures governing the protection of PHI and provide, upon GE's request, access to and copies of any such policies and procedures.

#### **4. TERMINATION.**

- 4.1 Upon GE's determination of a material breach of the terms of this Agreement by Supplier (which also includes its agents, vendors, and/or subcontractors), GE shall provide Supplier notice of that breach in sufficient detail to enable Supplier to understand the specific nature of that breach and, at its discretion, may afford Supplier an opportunity to cure the breach. In such event, Supplier will have thirty (30) days, from the day of the notice, to provide a written detailed plan for mitigating the breach, as well as a description of the processes that assure prevention of future reoccurrences. If Supplier fails to cure the breach within said time period, or if GE elects not to provide Supplier an opportunity to cure, GE may immediately terminate this Agreement and/or the Supplier Agreement(s) associated with such breach. Further, in the event GE determines that Supplier has committed a material breach of the terms of this Agreement, Supplier agrees that GE has a right to obtain injunctive relief to prevent further Use or Disclosure of PHI by Supplier. In addition to injunctive relief, GE also will have a right to pursue any other remedy provided by law or equity.
- 4.2 This Agreement shall automatically terminate with respect to a Supplier Agreement without any further action by the Parties when all of the PHI obtained from GE, or created or obtained by Supplier on behalf of GE, in connection with that Supplier Agreement, is destroyed or returned to GE.
- 4.3 Upon termination of the Supplier Agreement(s), Supplier shall immediately, but in no event more than thirty (30) days, return to GE or destroy, if feasible, any and all PHI received from GE or created or received by Supplier on behalf of GE pursuant to the terminated Supplier Agreement(s), which Supplier still maintains in any form, and shall not retain any copies of such PHI.
- 4.4 Upon termination of this Agreement, Supplier shall immediately, but in no event more than thirty (30) days, return to GE or destroy, if feasible, any and all PHI received from GE or created or received by Supplier on behalf of GE, which Supplier still maintains in any form, and shall not retain any copies of such PHI.
- 4.5 For purposes of this Agreement, destruction shall include, without limitation, destroying all backup tapes and permanently deleting all electronic PHI. Destruction shall utilize techniques that meet or exceed guidance from HHS. In the event that returning or destroying such PHI is not feasible, Supplier shall provide to GE a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Upon mutual agreement by the Parties that return or destruction of the PHI is not feasible, Supplier 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 Supplier maintains the PHI.

#### **5. INDEMNIFICATION.**

Supplier agrees to indemnify, defend and hold harmless GE, and its respective employees, directors, officers, vendors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified

Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement, including, without limitation, losses related to a Breach of Unsecured PHI, by Supplier or its employees, directors, officers, vendors, agents or other members of its workforce. Accordingly, upon Indemnified Party's demand, Supplier shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Supplier's acts or omissions hereunder. Vendors' obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

## 6. MISCELLANEOUS.

- 6.1 Interpretation. In the case of any conflict between this Agreement and the terms of any Supplier Agreement, the terms of this Agreement shall prevail with respect to the subject matter hereof. Except as supplemented and/or amended by this Agreement, the terms of a Supplier Agreement shall continue unchanged and shall apply with full force and effect to govern the matters addressed in the Supplier Agreement.
- 6.2 Survival. Notwithstanding any other provision of this Agreement to the contrary, the terms of sections 3, 4, 5, and 6 of this Agreement shall survive termination of this Agreement and continue indefinitely solely with respect to PHI Supplier retains in accordance with this Agreement.
- 6.3 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.4 Subpoenas. Supplier agrees to provide written notice to GE of any subpoena or other legal process seeking PHI received from or created on behalf of GE, or otherwise relating to Supplier's services, duties and obligations under the Supplier Agreement and/or the Agreement. Such notice shall be provided within forty-eight (48) hours of Supplier's receipt of such subpoena or legal process.
- 6.5 Notice. Any notice to GE required by this Agreement shall be sent via (1) certified mail, prepaid, return receipt requested, or (2) private courier service (e.g., Federal Express, UPS), to:
- General Electric Company  
Legal Compliance Dept  
Attn: Chief Privacy Counsel  
3135 Easton Turnpike  
Fairfield, CT 06828
- 6.6 No Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- 6.7 Amendment. The Parties mutually agree to enter into good faith negotiations to amend this Agreement from time to time in order for the Covered Entity, GE, or Supplier to comply with the requirements of HIPAA, as they may be amended from time to time, and any implementing regulations thereto that may be promulgated or revised from time to time.
- 6.8 Independent Contractors. None of the provisions of this Agreement are intended to create, nor will be deemed to create, any relationship between the Parties other than that of independent contracting parties with each other solely for the purposes of affecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.
- 6.9 Compliance with Law. Parties agree to comply with all applicable federal and state laws and regulations governing the confidentiality and security of PHI provided by GE to Supplier as permitted or required by this Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed in its name and on its behalf by its duly authorized representative.

\_\_\_\_\_  
**SUPPLIER**

**GENERAL ELECTRIC COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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