

## **HIPAA Subcontractor Addendum**

This HIPAA Subcontractor Addendum ("Addendum") ("Addendum") forms part of the Master Services Agreement (or similar agreement under which Services are provided to Hyland) ("Services Agreement") between Service Provider (or similar term under the Services Agreement) and Hyland.

### **RECITALS**

A. During its performance of Services, Service Provider may have access to and/or use Protected Health Information ("PHI") (defined below).

B. Hyland and Service Provider intend to protect the privacy and provide for the security of PHI to which Service Provider has access pursuant to the Services Agreement in compliance with (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (the "HIPAA Final Rule"), which amended the Privacy Rule and the Security Rule (as those terms are defined below) pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule (as those terms are defined below), the HITECH ACT, and the HIPAA Final Rule, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.").

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the Parties agree as follows:

Definitions.

**"Covered Entity"** has the same meaning given to such term as defined in 45 CFR § 160.103, and shall mean those Covered Entities to which Service Provider provides products and/or services as a subcontractor to Hyland.

**"Electronic Protected Health Information" or "Electronic PHI"** shall have the same meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Service Provider creates, receives, maintains or transmits from or on behalf of Hyland or a Covered Entity.

**"Protected Health Information" or "PHI"** shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Service Provider from or on behalf of Hyland or a Covered Entity.

**"Individual"** shall have the same meaning as the term "Individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

**"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

**"Security Incident"** shall have the same meaning given to such term in 45 C.F.R. § 164.304.

**"Security Rule"** shall mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

Capitalized terms used in this Addendum, but not otherwise defined, shall have the same meanings set forth in the Privacy Rule, the Security Rule and the HIPAA Final Rule, which definitions are incorporated in this Addendum by reference.

**Term.** This Addendum shall commence on the Effective Date and shall expire when all of the PHI provided by Hyland or a Covered Entity to Service Provider, or created or received by Service Provider on behalf of Hyland or Covered Entity, is destroyed or returned to Hyland, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 14(b) below.

**Uses and Disclosures of PHI Pursuant to Services Agreement.** Service Provider may use or disclose PHI to perform functions, activities or services for, or on behalf of, Hyland as specified in the Services Agreement, provided that such

use or disclosure would not violate the Privacy Rule if done by Hyland or a Covered Entity. To the extent that Service Provider is to carry out any of Hyland's or a Covered Entity's obligations under the Privacy Rule pursuant to the terms of the Services Agreement or this Addendum, Service Provider shall comply with the requirements of the Privacy Rule that apply to Hyland or Covered Entity in the performance of such obligation(s).

**Limits On Use And Further Disclosure Established By Agreement And Law.** Service Provider hereby agrees that the PHI provided or made available by Hyland or Covered Entity shall not be further used or disclosed other than as permitted or required by this Addendum or as Required by Law.

**Safeguards.** Service Provider will establish and maintain appropriate safeguards and shall comply with the Security Rule with respect to Electronic PHI, to prevent the use or disclosure of such Electronic PHI other than as provided for by the Services Agreement and this Addendum.

**Reports of Improper Use or Disclosure, Security Incident or Breach.** Service Provider shall report to Hyland, without unreasonable delay and in no case later than five (5) days of the discovery of any use or disclosure of PHI not permitted under this Addendum, Breach of Unsecured PHI, or Security Incident. Service Provider's notification to Hyland of a Breach shall include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Service Provider to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that Hyland would need to provide to Covered Entity, as such particulars are identified in 45 C.F.R. § 164.404.

**Subcontractors and Agents.** In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Service Provider shall enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Service Provider for services provided to Hyland, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this Addendum to Service Provider with respect to such PHI.

**Designated Record Set.** To the extent Service Provider maintains PHI in a Designated Record Set, Service Provider shall: make available PHI in accordance with 45 C.F.R. § 164.524. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Service Provider, or inquires about his or her right to access, Service Provider shall immediately forward such request to Hyland.

make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Service Provider, or inquires about his or her right to amendment, Service Provider shall immediately forward such request to Hyland.

**Documentation of Disclosures.** Service Provider agrees to document such disclosures of PHI and information related to such disclosures as would be required for Hyland or a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Service Provider shall document, at a minimum, the following information ("Disclosure Information"): (i) the date of the disclosure, (ii) the name and, if known, the address of the recipient of the PHI, (iii) a brief description of the PHI disclosed, (iv) the purpose of the disclosure that includes an explanation of the basis for such disclosure, and (v) any additional information required under the HITECH Act and any implementing regulations.

**Provide Accounting of Disclosures.** Service Provider agrees to provide to Hyland, information collected in accordance with Section 9 of this Addendum, to permit Hyland or a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual makes a request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to Service Provider, or inquires about his or her right to an accounting of disclosures of PHI, Service Provider shall immediately forward such request to Hyland.

**Access to Books and Records.** Service Provider hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Service Provider on behalf of Hyland or Covered Entity, available to Hyland and the Secretary of the Department of Health and Human Services or the Secretary's designee for purposes of determining compliance with HIPAA.

**HIPAA Final Rule Applicability.** Service Provider acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Service Provider under the Privacy Rule and the Security Rule. Service Provider agrees, as of the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule.

**Termination of Addendum.** Upon a breach of this Addendum by Service Provider, Hyland may, at its discretion, (i)

immediately terminate this Addendum and any Services Agreements, (ii) provide an opportunity for Service Provider to cure the breach in the timeframe specified by Hyland, provided that Hyland may terminate the Addendum and any Services Agreements if Service Provider does not cure the breach or end the violation within the time specified, or (iii) report the violation to the Secretary.

#### **Effect of Termination.**

- 1. Except as provided in paragraph (b) of this Section 14, upon termination of the Services Agreement or this Addendum for any reason, Service Provider shall return or destroy all PHI received from Hyland or a Covered Entity, or created or received by Service Provider on behalf of Hyland or a Covered Entity, and shall retain no copies of the PHI. Service Provider will certify that such return or destruction has been completed no later than thirty (30) calendar days following the effective date of termination.
  2. If it is infeasible for Service Provider to return or destroy the PHI upon termination of the Services Agreement or this Addendum, Service Provider shall: (i) extend the protections of this Addendum to such PHI; and (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Service Provider maintains such PHI.
  3. Notwithstanding the foregoing, at any time during the term of this Addendum, upon request by Hyland, Service Provider will return or destroy all PHI relating to a particular Covered Entity. Service Provider will certify that such return or destruction has been completed no later than thirty (30) calendar days following Hyland's request.

**Minimum Necessary.** Service Provider will request, use, and disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use, or disclosure of such PHI, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto. Service Provider understands and agrees that the definition of "minimum necessary" is subject to change from time to time and will keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

**Mitigation.** To the maximum extent practicable, Service Provider shall cooperate with Hyland's efforts to mitigate a harmful effect that is known to Service Provider of a use or disclosure of PHI that is not permitted by this Addendum.

**Marketing.** Service Provider may not use or disclose PHI for marketing purposes.

**Prohibition on Sale and Research.** Service Provider may not sell PHI or use or disclose PHI for any research purposes. Service Provider may not de-identify or aggregate PHI.

**Incorporation by Reference.** To the extent not incorporated or referenced in the Addendum, other requirements applicable to Service Provider under the HITECH Act are incorporated by reference into this Addendum.

**Indemnification.** Each of Hyland and Service Provider (in such case the "Indemnitor") shall indemnify, defend and hold the other party (in such case the "Indemnitee"), its Covered Entities, and the Indemnitee's respective employees, officers, directors and agents ("Indemnified Parties") harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including without limitation, reasonable attorneys' fees, expert witness fees and costs of investigation, litigation or any form of dispute resolution, incurred by the Indemnified Parties relating to or arising out of Indemnitor's acts and omissions associated with Indemnitor's obligations under this Addendum or its use or disclosure of PHI. The indemnification provided for in this section shall not in any way be limited or restricted by any provision in any other agreement between Hyland and Service Provider.

**Cooperation in Investigations.** The Parties acknowledge that certain breaches or violations of this Addendum may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

**Survival.** Any provision of this Addendum, which by its nature or terms extends beyond the termination or expiration of this Addendum, including without limitation the respective rights and obligations set forth in Section 14(b) (Effect of Termination), 20 (Indemnification), 21 (Cooperation in Investigations), and 22 (Survival), shall survive termination of this Addendum and the Services Agreement.

**Notices.** Notice shall be provided to Service Provider as set forth in the Services Agreement. As to Hyland, notice shall be given in writing to:

Hyland Software, Inc.

28500 Clemens Road

Westlake, OH 44145

Attention: Privacy Officer

Phone: 440-788-5000

E-Mail: [Privacy@hyland.com](mailto:Privacy@hyland.com)

**No Third Party Beneficiaries.** Nothing herein, express or implied, is intended to or shall confer upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Addendum.

**Effect of Addendum.** In the event of any inconsistency between the provisions of this Addendum and the Services Agreement, the provisions of this Addendum shall control. In the event of inconsistency between the provisions of this Addendum and mandatory provisions of the Privacy Rule, the Security Rule or the HIPAA Final Rule, or their interpretation by any court or regulatory agency with authority over Hyland or a Covered Entity, such interpretation shall control. This Addendum may only be amended in a writing signed by both parties.

**General.** If any part of a provision of this Addendum is found illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Addendum shall not be affected. This Addendum may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. This Addendum is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications and understandings (written and oral) regarding its subject matter.