

HEALTH INFORMATION SAFEGUARD COMPLIANCE AGREEMENT

WHEREAS, _____, a _____ corporation/partnership/limited liability company (cross out designations which are not applicable) with primary business offices at _____, _____ (address, city, state, zip code), hereinafter called "Covered Entity" or "CE", in the course of its business functions customarily collects, transmits and distributes material upon or in which health information is stored and recorded (hereinafter called "protected health information" or "PHI"); and

WHEREAS, C. T. Harris Imaging, Inc., a Corporation with primary business offices at P.O. Box 562, Salisbury NC, 28145, hereinafter referred to as "Business Associate" or "BA", in the course of its business functions customarily receives and takes from CE various types of the materials upon or in which CE has stored and recorded PHI; and

WHEREAS BA, either for itself or as an intermediary, thereafter processes or disposes of the materials containing PHI which it receives from CE; and

WHEREAS, CE is a Covered Entity to whom the provisions of 42 U.S.C. 1320d-1 (a) are applicable, and under which CE is required to provide a plan for reasonable and appropriate administrative, technical, and physical safeguards pursuant to 42 U.S.C. 1320d-2 (d) (2) in order to ensure the integrity and confidentiality of PHI contained within materials it collects, transmits and distributes and protect against threats or hazards to the security or integrity of such PHI and any unauthorized use or disclosure of such PHI which can be reasonably anticipated; and

WHEREAS, BA desires to continue its relationship with CE by taking from, purchasing, and receiving from CE the various types of materials upon or in which CE stores and records PHI and wishes to assure CE of its observance and compliance with the requirements of law with respect to CE's duty to safeguard PHI contained within materials obtained from CE;

NOW, THEREFORE, in consideration of the promises and covenants herein contained and subject to the terms and provisions hereof, the parties hereby agree as follows:

1. Definitions

- 1.01. Business Associate. "Business Associate" or "BA" means _____
- 1.02. Covered Entity. "Covered Entity" or "CE" means _____
- 1.03. Individual. "Individual" has the same meaning set forth in 45 CFR §164.501 and includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.04. Privacy Rule. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.05. Protected Health Information. "Protected Health Information" ("PHI") has the same meaning set forth in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.06. Required By Law. "Required By Law" has the same meaning set forth in 45 CFR §164.501.
- 1.07. Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or his designee.

2. Usage by Business Associate

2.01. In General

Except as otherwise provided in this Agreement, BA may generally use or disclose materials containing PHI to provide services to or on behalf of CE in the course and scope and as part of its continuing relationship with CE so long as any such use or disclosure of materials containing PHI does not constitute a violation of the Privacy Rule if it were to be done by CE or otherwise violate the minimum policies and procedures necessary to be observed by CE.

2.02. Specific Usage

a. Except as otherwise limited by this Agreement or by applicable law, BA may disclose, sell, transfer, display or destroy materials received from CE containing PHI as part of and for the usual and customary course, management, operation and administration BA's business, so long as BA takes all steps and employs all measures reasonably necessary or as may be Required By Law to obtain reasonable assurance from any person to whom PHI is to be disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was conveyed to such person; such person shall expressly agree to notify BA of any instances of which it becomes aware in which the confidentiality of the information has been breached.

b. Except as otherwise provided in or limited by this Agreement, BA may use PHI in any manner consistent with the foregoing provision in order to carry out the purpose and effect thereof in furtherance of the services being provided to or on behalf of CE.

c. Without regard to provisions of this Agreement, under applicable law BA may use information contained within PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

3. Duties of Covered Entity

3.01. CE's Obligation With Respect to PHI Materials

Prior to CE's transfer of its materials in which PHI is contained, including but not limited to assembling and packaging of such materials for shipment or delivery to BA, CE shall take all steps and employ all measures reasonably necessary and or Required By Law to assure the continued safeguard of PHI during transition and transfer of such materials to BA. The duty to provide for the safeguard of PHI containing materials shall pass to BA only upon its actual physical receipt thereof.

3.02. CE's Obligation to Inform BA of Privacy Practices and Restrictions

a. CE shall notify BA of any limitation(s) in its notice of privacy practices in accordance with 45 CFR §164.520 to the extent that such limitation may affect BA's use or disclosure of materials containing PHI.

b. CE shall notify BA of any change in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such change may affect BA's use or disclosure of materials containing PHI.

c. CE shall notify BA of any restriction respecting the use or disclosure of PHI to which CE has agreed in accordance with 45 CFR §164.522 to the extent that such restriction may affect BA's use or disclosure of materials containing PHI.

d. CE shall not require or request BA to use, disclose or do anything with materials containing PHI in a manner which is inconsistent with applicable law or which would be a violation of the Privacy Rule if it were to be done by CE.

4. Duties of Business Associate

4.01 BA's Obligations With Respect to CE and PHI Materials

a. BA shall not use or disclose materials containing PHI other than as permitted or required by this Agreement or as Required By Law.

b. BA shall at all times use appropriate safeguards to prevent unauthorized use or disclosure of PHI contained within materials received from CE, other than as permitted by this Agreement or applicable law.

c. BA shall mitigate, to the extent practicable, any harmful effect that becomes known to BA of a use or disclosure of PHI in violation of the requirements of this Agreement or of the Privacy Rule.

d. BA shall report to CE any use or disclosure of materials containing PHI not provided for by this Agreement of which it becomes aware.

e. BA shall ensure that any agent, including a subcontractor to whom it transfers, sells or otherwise provides materials containing PHI received from or on behalf of CE, shall as a condition to such transfer, sale or providing, agree to the same restrictions and conditions applicable to BA under this Agreement with respect to such materials containing PHI.

f. BA shall, upon reasonable prior written request from CE of not less than three (3) business days, provide access to CE or, as directed by CE, to an Individual, during BA's normal business hours of operation, to materials received from CE containing PHI that may then be in BA's possession or custody, in order to meet, if necessary, the requirements of 45 CFR § 164.524.

g. BA shall make its internal practices, books, and records, including policies and procedures respecting the safeguard of materials containing PHI received from or on behalf of CE, available to CE during BA's normal business hours of operation, upon reasonable prior written request from CE of not less than three (3) business days, or to the Secretary at such time and in such manner as may be designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule.

h. BA shall document any disclosure of materials containing PHI and information related to such disclosure as may be necessary or required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

j. BA shall provide to CE or an Individual, upon reasonable prior written request from CE or such Individual of not less than three (3) business days, the information collected in accordance with Section 4.01 (h) above in order to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

4.02 BA's Indemnity of CE With Respect Protection and Disclosure of PHI Materials

a. At all times following BA's actual physical receipt of materials containing PHI from or on behalf of CE, BA shall indemnify and hold CE harmless from any penalties and

liabilities which may be imposed on CE under the provisions of 42 U.S.C. 1320d-5 resulting from any failure to safeguard and keep protected and confidential, including the disclosure or dissemination, of any materials containing PHI; BA's indemnity under this subsection shall extend to and include CE's reasonable counsel fees to defend or respond to any such violations and to costs incurred in connection therewith.

b. At all times following BA's actual physical receipt of materials containing PHI from or on behalf of CE, BA shall indemnify and hold CE harmless from any fines or penalties which may be imposed on CE under the provisions of 42 U.S.C. 1320d-6 resulting from any wilful or knowing violation of such statute with respect to wrongful use of unique health identifier or disclosure of individually identifiable health information; BA's indemnity under this subsection shall extend to and include CE's reasonable counsel fees to defend or respond to any such violations and to costs incurred in connection therewith.

5. Term and Termination

5.01. Term. The term of this Agreement shall be effective as of the date of execution hereof by the last party to sign, shall continue in effect so long thereafter as BA continues to have possession or custody and control of materials containing PHI received from or on behalf of CE, and shall terminate when all materials containing PHI provided by CE to BA, or received by BA on behalf of CE, has either been destroyed or returned to CE, or if not feasible to return or destroy such materials, when protections are extended to such materials in accordance with the termination provisions set forth in the next subsection.

5.02. Termination for Cause. If CE should discover a material breach of this Agreement by BA, CE shall either:

a. Notify BA in writing of the nature of the breach and provide BA an opportunity to cure the breach or end the violation and provide in such notice that this Agreement shall terminate if BA does not cure the breach or end the violation within the time specified by CE in such notice; or

b. Upon written notice to BA, immediately terminate this Agreement if BA has breached a material term of this Agreement and cure is not possible; or

c. If neither termination nor cure are feasible, CE shall report the violation to the Secretary.

5.03 Effect of Termination.

a. Except as provided in sub-paragraph (b) of this section, upon termination of this Agreement for any reason, BA shall return or destroy all materials containing PHI received from or on behalf of CE. This provision shall also apply to any materials

containing PHI which is in the possession or custody and control of any subcontractors or agents of BA. Neither BA nor any of its subcontractors or agents shall retain any materials containing PHI.

b. In the event BA determines that returning or destroying the materials containing PHI is not feasible, BA shall provide to CE written notification of the specific conditions which render return or destruction unfeasible. Upon such notification from BA to CE, BA shall immediately for and for so long as BA maintains such materials, extend the full protections of this Agreement to all materials containing PHI remaining in its possession and limit any further use, display or dissemination of such materials PHI to the express purposes which made its return or destruction unfeasible.

6. Miscellaneous

6.01. Regulatory References. References in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

6.02. Amendment. The Parties agree to take such actions as may be necessary from time to time to amend this Agreement in order to allow CE to continue to comply with the requirements of the Privacy Rule and the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, provided, however, that no modification or amendment of this Agreement shall be valid, unless it is in a subsequent writing signed by both CE and BA.

6.03. Survival. The respective rights and obligations of BA under Section 5.03 shall survive any termination of this Agreement.

6.04. Interpretation. Any ambiguity in this Agreement shall be resolved in a manner to permit CE to comply with the Privacy Rule.

6.05 Construction. The parties acknowledge that each of them and their respective counsel or advisors have reviewed and approved the contents of this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

6.06 Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the state and jurisdiction in which CE has its principal place of business; all performance by either party hereunder shall be performable in the county in which CE has its principal place of business.

6.07. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be effective on the earlier of the date it is actually received or the date on which it is placed in the United States Mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified.

6.08. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns.

6.09. Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

6.10 Effective Date. The effective date, referred to herein as the "Effective Date", of this Agreement shall be the date on which the last party hereto has affixed its signature as shown below to the left of its signature line.

COVERED ENTITY ("CE")

Executed by CE on _____, 2003. -----
[typed or printed name of Covered Entity]

CE's ADDRESS:

BY: _____
[name of and title of officer or agent]

BUSINESS ASSOCIATE ("BA")

Executed by BA on April 10, 2003.

C. T. Harris Imaging, Inc.

P. O. Box 562
Salisbury, NC 28145

BY: _____