



BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is made as by and between **Verifone** (“Covered Entity”) and The ETC Companies (“Business Associate”).

WHEREAS, Covered Entity is a group health plan as defined in the Privacy Rule adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rules).

WHEREAS, Business Associate has been retained by the Covered Entity to perform a function or activity on behalf of the Covered Entity that requires that the Business Associate have access to Protected Health Information.

WHEREAS, Covered Entity desires to receive satisfactory assurances from the Business Associate that it will comply with the obligations required of business associates by the Privacy Rule, the Security Rule and HITECH.

WHEREAS, the parties wish to set forth their understandings with regard to the use and disclosure of PHI by the Business Associate in performance of its obligations.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereby agree as follows:

1. Definitions.

- a. “HITECH” shall mean Title XIII of the American Recovery and Reinvestment Act of 2009 (“ARRA”), called the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, codifies and expands on many of the requirements promulgated by the Department of Health & Human Services (“DHHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) to protect the privacy and security of protected health information (“PHI”).
- b. “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- c. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- d. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- e. “Required By Law” shall have the same meaning as the term “required by law” in 45CFR 164.501.
- f. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- g. “Security Rule” shall mean the Health Insurance Reform: Security Standards at 45 CFR Parts 160, 162 and 164.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Underlying Agreement or as Required By Law.

- b. Business Associate agrees to use appropriate safeguards, including without limitation administrative, physical, and technical safeguards, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it may receive, maintain, or transmit on behalf of the Covered Entity.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to comply with the Security Rules, as required by HITECH, in a manner consistent with the Rule and regulations that may be adopted by relevant federal agencies, to keep all electronic protected health information in a secure manner, as required under federal law.
- e. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or any security incident of which it becomes aware involving Protected Health Information of the Covered Entity.
- f. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- g. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- h. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- i. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy & Security Rules.
- j. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- k. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- l. Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure, breach notification, compliance, and re-disclosure requirements of HITECH, Privacy Rule and the Security Rule to the extent such requirements may be applicable.
- m. Business Associate acknowledges that if it becomes aware of a "pattern of activity or practice" by Covered Entity, or any other Business Associate, that breaches a Business Associate Agreement, but fails to cure the breach, Business Associate shall immediately terminate the relevant agreement, or report the non-compliance to the United States Department of Health and Human Services' Office of Civil Rights.
- n. Business Associate acknowledges that it is subject to compliance audits by the United States Department of Health and Human Services' Office of Civil Rights.
- o. Business Associate acknowledges that, in the event of any unauthorized acquisition, access, use or disclosure of Protected Health Information, Business Associate shall fully comply with the breach notification requirements, including any and all regulations which have been or may be promulgated.

- p. Business Associate shall comply with any and all regulatory requirements which may arise in the future to comply fully with the Privacy Rules, the Security Rule and HITECH, including, but not limited to, restrictions on disclosures to health plans, clarified minimum necessary standards, expanded accounting requirements applicable to electronic health records, revised prohibitions on sales of PHI, and updated marketing and fundraising restrictions.
- q. Business Associate acknowledges that, pursuant to HITECH, Business Associate, its employees and contractors, and any third party (and their employees, contractors, and further third parties) who may have access to or possession of the Covered Entity's Protected Health Information, are subject to regulatory oversight of the various federal and/or state agencies as a Business Associate, and may be subject to both civil and criminal penalties which may arise from violations of this Agreement, the Privacy Rules, the Security Rule and HITECH.

3. Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy & Security Rule if done by Covered Entity.

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Obligations of the Company.

- a. Company shall provide Business Associate with the notice of privacy practices that Company produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- b. Company shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. Company shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Company has agreed to in accordance with 45 CFR 164.522.

5. Permissible Requests by the Company.

Company shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy & Security Rule if done by Company.

6. Term and Termination.

- a. Term. The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall terminate when all of the Protected Health Information provided by Company to Business Associate, or created or received by Business Associate on behalf of Company, is destroyed or returned to Company, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Company's knowledge of a material breach by Business Associate, Company may, in its sole discretion, either (1) provide Business Associate with an opportunity to cure the breach and then terminate the Underlying Agreement if Business Associate does not cure

the breach within time period specified by the Company or (2) terminate the Underlying Agreement immediately.

c. Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement or the Underlying Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Company, or created or received by Business Associate on behalf of Company. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Company notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

d. Effective Date. The effective date of this Agreement (the "Effective Date") shall be the later of (i) the effective date of the Underlying Agreement or (ii) April 14, 2003.

7. Miscellaneous.

a. Regulatory References. A reference in this Agreement to a section in the Privacy & Security Rule means the section as in effect or as amended, and for which compliance is required.

b. Indemnification. Business Associate shall release, indemnify and hold Company harmless from and against any claims, fees, and costs, including, without limitation, reasonable attorneys' fees and costs, which are related to Business Associate's failure to perform its obligations under this Agreement. Company shall release, indemnify and hold Business Associate harmless from and against any claims, fees, and costs, including without limitation, reasonable attorneys' fees and costs, which are related to Company's alleged improper use or disclosure of Protected Health Information.

c. Remedies. The parties acknowledge that breach of this Agreement may cause irreparable harm for which there is no adequate remedy at law. In the event of a breach, or if Company has actual notice of an intended breach, Company shall be entitled to a remedy of specific performance and/or injunction refraining Business Associate from violating or further violating this Agreement. The parties agree the election of the Company to seek injunctive relief and or specific performance of this Agreement does not foreclose or have any effect on any right the Company may have to recover damages.

d. Amendment. The Parties agree to take such action as is necessary to amend the Underlying Agreement from time to time as is necessary for Company to comply with the requirements of the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191 and HITECH; provided, however, that no amendment shall be deemed valid unless signed by both parties.

e. Survival. The respective rights and obligations of Business Associate under Sections 2, 3 and 4 of this Agreement shall survive the termination of this Agreement and/or the Underlying Agreements, as shall the rights of access and inspection of Business Associate by Company.

f. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Company to comply with the Privacy and Security Rules.

g. Material Breach. The parties acknowledge that in the event the Company learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Company, unsuccessful, ineffective or not feasible, then the Company may terminate, in its sole discretion, any or all of the Underlying Agreements upon written notice

to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of HHS.

- h. Governing Law; Conflict. This Agreement shall be enforced and construed in accordance with the laws of the State of Texas. Jurisdiction of any litigation with respect to this Agreement shall be in Texas, with venue in a court of competent jurisdiction located in Bexar. In the event of a conflict between the terms of this Agreement and the terms of any of the Underlying Agreements, the terms of this Agreement shall control.
- i. Notices. Any notice given under this Agreement must be in writing and delivered via first class mail, via reputable overnight courier service, or in person to the parties' respective addresses as first written above or to such other address as the parties may from time to time designate in writing.
- j. Assigns. Neither this Agreement nor any of the rights, benefits, duties, or obligations provided herein may be assigned by Business Associate without the prior written consent of the Company.
- k. Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any rights or remedies in any third party.

The parties hereby acknowledge and agree to the terms of this Agreement consisting of a total of six (6) pages, including this signature page, which together represent an Agreement between the parties concerning use and disclosure of Protected Health Information.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, this ____ day of _____, 2015.

Austin Radiological Association Entities (“Covered Entity”):

Signature Printed Name: _____
_____(title)

The ETC Companies (“Business Associate”)

Alicia J. Haff
Alicia J. Haff, JD
Partner