

**MEMORANDUM OF UNDERSTANDING
PURSUANT TO
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

This **MEMORANDUM OF UNDERSTANDING (“MOU”)** is entered into by and among the following agencies of the City of New York: the Department of Health and Mental Hygiene (“DOHMH”), the Fire Department of the City of New York (“FDNY”), the Human Resources Administration (“HRA”), the Office of Labor Relations (“OLR”), the Department of Information Technology and Telecommunications (“DOITT”), the Department of Records and Information Services (“DORIS”), and the Law Department (“Law Dept.”). Each of the agencies may be referred to as a Party and collectively as the “Parties.” This MOU shall be effective on September 23, 2013 (“Effective Date”), and shall supersede all Memoranda of Understanding Pursuant to the Health Insurance Portability and Accountability Act of 1996 entered into by and between any of the Parties prior to the Effective Date.

WHEREAS, the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated thereunder, as the law and regulations may be amended (“HIPAA”), requires that Covered Entities and their Business Associates (as such terms are defined in 45 CFR §160.103) enter into a business associate contract to provide satisfactory assurances that a Business Associate will appropriately safeguard Protected Health Information (as such term is defined in 45 CFR §160.103) it creates, receives, maintains, transmits, accesses, uses and/or discloses on behalf of a Covered Entity;

WHEREAS, each of DOHMH, FDNY, HRA, and OLR is a Covered Entity that constitutes a Hybrid Entity (as such term is defined in 45 CFR §164.103) under HIPAA, because each agency’s business activities include both covered and non-covered functions under HIPAA;

WHEREAS, the covered functions of DOHMH, FDNY, HRA, and OLR consist of one or more Health Care Components (as such term is defined in 45 CFR §164.103), which are generally subject to the requirements of HIPAA that apply to Covered Entities (see 45 CFR §164.105(a));

WHEREAS, this MOU applies to the Health Care Components of DOHMH, FDNY, HRA, and OLR and is not intended to apply to the non-covered functions of those agencies;

WHEREAS, each of DOITT, DORIS, and the Law Dept. is a Business Associate under HIPAA because in carrying out each such agency’s powers, functions and obligations under the New York City Charter and applicable law it may create, receive, maintain, transmit, access, use and/or disclose Protected Health Information on behalf of one or more Covered Entity agencies;

WHEREAS, HIPAA regulations provide that if a Covered Entity and its Business Associate are both governmental entities, a Covered Entity may comply with HIPAA by entering into a memorandum of understanding with its Business Associate that contains terms that

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

accomplish the objectives of a business associate contract (see 45 CFR §164.504(e)(3)(i)(A)); and

WHEREAS, recent amendments to the HIPAA regulations published on January 25, 2013 (see 78 FR 5566) necessitate that the Parties enter into this MOU for the purpose of each Business Associate agency providing satisfactory assurances to each Covered Entity agency that each Business Associate will appropriately safeguard the Protected Health Information of each Covered Entity in accordance with the amended HIPAA regulations.

NOW THEREFORE, the Parties do hereby agree as follows:

I. DEFINITIONS

Except as otherwise defined herein, any and all terms used in this MOU shall have the same meaning as those terms in the HIPAA Rules (as defined below). As used in this MOU, the following terms shall have the following meanings:

- (a) **“Breach”** shall have the same meaning as the term “breach” in 45 CFR §164.402.
- (b) **“Business Associate”** shall have the same meaning as the term “business associate” in 45 CFR §160.103, and for this MOU each of DOITT, DORIS, and the Law Dept. is a business associate with respect to the Protected Health Information that each agency creates, receives, maintains, transmits, accesses, uses and/or discloses on behalf of a Covered Entity. Business associates shall be referred to generically as “business associates.”
- (c) **“Covered Entity”** shall have the same meaning as the term “covered entity” in 45 CFR §160.103, and for this MOU each of DOHMH, FDNY, HRA, and OLR is a covered entity with respect to the Health Care Components of each agency, and any reference to a “Covered Entity” herein applies to a Health Care Component of the Covered Entity. Covered Entities shall be referred to generically as “covered entities.”
- (d) **“Designated Record Set”** shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
- (e) **“Electronic Protected Health Information”** or **“Electronic PHI”** shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103, except that Electronic PHI shall be limited to the information created, received, maintained, transmitted, accessed, used and/or disclosed by a Business Associate or its Subcontractors or agents on behalf of a Covered Entity.
- (f) **“Health Care Component”** shall have the same meaning as the term “health care component” in 45 CFR §164.103.
- (g) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated thereunder, as the law and regulations may be amended.

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

- (h) **“HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as they may be amended.
- (i) **“Individual”** shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (j) **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term "protected health information" in 45 CFR §160.103, except that PHI shall be limited to the information created, received, maintained, transmitted, accessed, used and/or disclosed by a Business Associate or its Subcontractors or agents on behalf of a Covered Entity.
- (k) **“Required by Law”** shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- (l) **“Secretary”** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- (m) **“Security Incident”** shall have the same meaning as the term “security incident” in 45 CFR §164.304.
- (n) **“Subcontractor”** shall have the same meaning as the term “subcontractor” in 45 CFR §160.103, and for this Attachment shall be a subcontractor of a Business Associate.
- (o) **“Unsecured Protected Health Information”** or **“Unsecured PHI”** shall have the same meaning as the term “unsecured protected health information” in 45 CFR §164.402.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATES

- (a) **Permitted or Required Uses.** Each Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this MOU or as Required By Law.
- (b) **Appropriate Safeguards.** Each Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this MOU, and with respect to Electronic Protected Health Information to comply with Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.).
- (c) **Mitigation.** Each Business Associate agrees to mitigate, to the extent practicable, any harmful effects of which the Business Associate becomes aware that have resulted from any unauthorized acquisition, access, use or disclosure of Protected Health Information by the Business Associate, its Subcontractors or agents.
- (d) **Reporting Unauthorized Use or Disclosure.** Each Business Associate agrees to report to the relevant Covered Entity, in writing, any unauthorized acquisition, access, use or disclosure of the Covered Entity’s Protected Health Information by the Business Associate, its Subcontractors or agents in violation of this MOU of which the Business Associate becomes aware as soon as reasonably practicable.

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

- (e) **Notification of Breach of Unsecured PHI.** Each Business Associate agrees to comply with the requirements of Subpart D of 45 CFR Part 164 (45 CFR §164.400 et seq.), including but not limited to the requirement that, following the discovery of any Breach of Unsecured PHI of a Covered Entity, the Business Associate shall, without unreasonable delay, and in no event later than sixty (60) days after discovery of any Breach of Unsecured PHI, notify the Covered Entity in writing of any such Breach, unless a delay in such notification is required by 45 CFR §164.412.
- (f) **Subcontractors and Agents.** In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), as applicable, each Business Associate agrees to ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, access, use and/or disclose Protected Health Information of a Covered Entity on behalf of the Business Associate, agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- (g) **Access by Individual.** Each Business Associate agrees to provide access, at the request of a Covered Entity, and in a reasonable time and manner, to Protected Health Information of the Covered Entity in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to an Individual or Individual's designee in order to satisfy the Covered Entity's obligations under 45 CFR §164.524, provided that the Business Associate has Protected Health Information of the Covered Entity in a Designated Record Set.
- (h) **Amendment to PHI.** Each Business Associate agrees to make any amendment(s) to Protected Health Information of a Covered Entity in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner, and to take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.526, provided that the Business Associate has Protected Health Information of the Covered Entity in a Designated Record Set.
- (i) **Request for an Accounting.** Each Business Associate agrees to document such disclosures of Protected Health Information of a Covered Entity, and information related to such disclosures, as would be required for the 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. Each Business Associate agrees to make available to a Covered Entity or an Individual, in a reasonable time and manner, information collected pursuant to this Section II(i) in order to provide an accounting of disclosures as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528.
- (j) **Additional Restrictions on PHI.** If a Covered Entity notifies a Business Associate that it has agreed to be bound by additional restrictions on the uses or disclosures of certain Protected Health Information of the Covered Entity pursuant to the HIPAA Rules, the Business Associate agrees to be bound by such additional restrictions and shall not disclose such PHI in violation of such additional restrictions.
- (k) **Carrying Out Covered Entity Obligation(s).** To the extent that a Business Associate is to carry out one or more of a Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

(45 CFR §164.500 et seq.), the Business Associate shall comply with the requirements of such Subpart E that apply to the Covered Entity in the performance of such obligation(s).

(l) **Access by Secretary to Determine Compliance.** Each Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information created, received, maintained, transmitted, or accessed by the Business Associate on behalf of the Covered Entity, available to the Covered Entity and to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of determining compliance with the HIPAA Rules.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATES

(a) **Use and Disclosure for Performance.** Except as otherwise provided in this MOU, a Business Associate may only use or disclose Protected Health Information of a Covered Entity to perform services, functions, activities, and/or duties for, or on behalf of, the Covered Entity as necessary to carry out the Business Associate's powers, functions and duties under the New York City Charter or applicable law, or as necessary to perform its duties under this MOU, or as Required by Law, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity.

(b) **Disclosure to Third Parties.** Subject to Section II(f) and Section IV(b) of this MOU, a Business Associate may disclose Protected Health Information of a Covered Entity to third parties to perform services, functions, activities, and/or duties for, or on behalf of, the Covered Entity as necessary to carry out Business Associate's powers, functions and duties under the New York City Charter or applicable law, or as necessary to perform its duties under this MOU. The third parties shall provide written assurances of their confidential handling of such PHI, which shall include adherence to the same restrictions and conditions on use and disclosure as apply to the Business Associate herein.

(c) **Minimum Necessary Use and Disclosure.** In accordance with the HIPAA Rules, when using or disclosing Protected Health Information of a Covered Entity, or when requesting PHI from the Covered Entity or another covered entity or business associate, a Business Associate agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

(d) **Use for Management, Administration and Legal Responsibilities.** A Business Associate may use Protected Health Information of a Covered Entity if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(e) **Disclosure for Management, Administration and Legal Responsibilities.** A Business Associate may disclose Protected Health Information of a Covered Entity if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (1) the disclosure is Required By Law, or (2) (A) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (B) the person

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) **Data Aggregation Services.** A Business Associate may use or disclose Protected Health Information of a Covered Entity to provide data aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

IV. SECURITY REQUIREMENTS

(a) **Safeguards to Protect Electronic PHI.** Each Business Associate agrees to comply with the applicable requirements of Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.), which include but are not limited to, implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that the Business Associate creates, receives, maintains, transmits, or accesses on behalf of a Covered Entity.

(b) **Subcontractors and Agents.** In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), as applicable, each Business Associate agrees to ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, or access Electronic Protected Health Information of a Covered Entity on behalf of Business Associate agree in writing to comply with the applicable requirements of Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.), which include but are not limited to, implementing reasonable and appropriate safeguards to protect such information.

(c) **Reporting Security Incident.** Each Business Associate agrees to report to the relevant Covered Entity, in writing, any Security Incident involving Protected Health Information of the Covered Entity experienced by Business Associate, its Subcontractors or agents, of which Business Associate becomes aware as soon as reasonably practicable.

V. OBLIGATIONS OF COVERED ENTITIES

(a) **Notify of Limitation(s) in Privacy Notice.** Each Covered Entity shall notify a Business Associate of any limitation(s) in the notice of privacy practices utilized by the Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information of the Covered Entity.

(b) **Notify of Changes in Individual's Permission.** Each Covered Entity shall notify a Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information of the Covered Entity, to the extent that such changes may affect the Business Associate's use or disclosure of such Protected Health Information.

(c) **Notify of Restriction on Use or Disclosure.** Each Covered Entity shall notify a Business Associate of any restriction on the use or disclosure of Protected Health Information of the Covered Entity that the Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of such Protected Health Information.

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

(d) **Impermissible Request by a Covered Entity.** Each Covered Entity shall not request a Business Associate to use or disclose Protected Health Information of the Covered Entity in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity.

VI. TERM; MATERIAL BREACH

(a) **Term.** This MOU shall become effective on the Effective Date and shall continue in effect until the effective date of (1) any agreement that supersedes this MOU, or (2) any change in applicable law that results in the elimination of the requirement for this MOU, whichever occurs first. This MOU shall continue in effect with respect to each Covered Entity and each Business Associate and their respective successor agencies or assigns as long as each such Covered Entity and Business Associate and their respective successor agencies or assigns continue in existence under law.

(b) **Material Breach.** Upon a Covered Entity's knowledge of a material breach by a Business Associate of any of the terms and conditions of this MOU affecting the Protected Health Information of the Covered Entity, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach.

VII. MISCELLANEOUS

(a) **Agency.** For purposes of this MOU, it is the understanding and intention of the Parties that each and every Business Associate is not acting as an agent of each and every Covered Entity.

(b) **References to Law and Rules.** A reference in this MOU to any section of law or rules (including but not limited to the HIPAA Rules), means the section of law or rules as in effect or as amended.

(c) **Amendment.** The Parties agree to take such action to amend this MOU from time to time as is necessary to ensure that this MOU at all times remains consistent with applicable law and rules regarding use and disclosure of Protected Health Information (including but not limited to the HIPAA Rules).

(d) **Interpretation.** Any ambiguity in this Attachment shall be resolved in favor of a meaning that permits a Covered Entity and a Business Associate to comply with the HIPAA Rules.

(e) **Successors and Assigns.** A successor agency or assign of any Party to this MOU shall be subject to all of the terms and conditions of this MOU applicable to such Party.

(f) **No Third Party Beneficiaries.** Nothing express or implied in this MOU is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

(g) **Counterparts.** This MOU may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one MOU.

IN WITNESS WHEREOF, each of the undersigned Parties has caused this MOU to be duly executed in its name and on its behalf:

COVERED ENTITY AGENCIES

BUSINESS ASSOCIATE AGENCIES

DOHMH

DOITT

By: 
Title: Patsy Yang, Dr. PH
Executive Deputy Commissioner & Chief Operating Officer

By: _____
Title: _____

Date: 9/11/13

Date: _____

FDNY

DORIS

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

HRA

LAW DEPT.

By: _____
Title: _____

By: _____
Title: _____

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

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COVERED ENTITY AGENCIES

BUSINESS ASSOCIATE AGENCIES

DOHMH

DOITT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

FDNY

DORIS

By: Robert L. Scott

By: _____

Title: Asst. Dir.

Title: _____

Date: 9/26/13

Date: _____

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

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COVERED ENTITY AGENCIES

BUSINESS ASSOCIATE AGENCIES

DOHMH

DOITT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

FDNY

DORIS

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

HRA

LAW DEPT.

By:  _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

HRA

By: _____

Title: _____

Date: _____

LAW DEPT.

By: _____

Title: _____

Date: _____

OLR

By: James F. Hanley

Title: Commissioner

Date: 9/23/13

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

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COVERED ENTITY AGENCIES

BUSINESS ASSOCIATE AGENCIES

DOHMH

DOITT



By: _____

By: _____

Title: _____

Title: Chief of Staff

Date: _____

Date: 9/18/13

FDNY

DORIS

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

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COVERED ENTITY AGENCIES

BUSINESS ASSOCIATE AGENCIES

DOHMH

DOITT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

FDNY

DORIS

By: _____

By:  _____

Title: _____

Title: *Deputy Commissioner* _____

Date: _____

Date: _____

HRA

LAW DEPT.

By: _____

By: _____

Title: _____

Title: _____

HIPAA MOU – Covered Entity and Business Associate Agencies - Final

HRA

By: _____

Title: _____

Date: _____

LAW DEPT.

By: _____

Title: _____

Date: _____

[Handwritten signature]
Managing atty.
9/12/13

OLR

By: _____

Title: _____

Date: _____