

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

SOUTH CAROLINA)
ASSOCIATION OF COUNTIES)

(SCAC))
AND)
_____)
(Claimant Agency)

**MEMORANDUM OF
UNDERSTANDING AND AGREEMENT

HIPAA ADDENDUM

FOR COVERED ENTITIES WITH
THIRD PARTY ADMINISTRATORS**

The following agreement operates as an ADDENDUM to the Memorandum of Understanding and Agreement for participation in the SCAC SETOFF DEBT COLLECTION PROGRAM 2003 executed between the above named claimant agency and the South Carolina Association of Counties. This ADDENDUM will remain in effect until superseded or terminated by either party. This ADDENDUM is executed in compliance with Regulations 45 C.F.R. Part 160 and 45 C.F.R. Part 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

WHEREAS the Claimant Agency is a "Covered Entity" as defined by HIPAA regulations; and

WHEREAS the Claimant Agency, as a Covered Entity, has engaged the South Carolina Association of Counties (SCAC) to carry out such identified services, which includes the use and disclosure of Protected Health Information to the South Carolina Department of Revenue; and

WHEREAS both the Claimant Agency and SCAC are defined as political subdivisions of the State, pursuant to S.C. Code Ann. § 12-56-20(1); and

WHEREAS 45 CFR § 164.504(e)(3) authorizes Covered Entities and a Business Associate, when both entities are governmental entities, to enter into a memorandum of understanding that contains terms sufficient to comply with the objectives of implementation specifications of a business associate contract.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein and in order to assure compliance with 45 C.F.R. Part 160 and 45 C.F.R. Part 164 on patient privacy and confidentiality, the parties agree as follows:

I. Definitions

The capitalized terms shall be as defined in this Agreement. If a term is not defined in this agreement, the terms shall have the meaning set forth in the HIPAA Regulations (the Regulations).

- A. Agreement. "Agreement" or "this Agreement" shall mean the underlying Setoff Debt or GEAR Memorandum of Understanding and Agreement between the above captioned parties and to this HIPAA Addendum.
- B. Business Associate. "Business Associate" shall mean the South Carolina Association of Counties (SCAC).
- C. Covered Entity. "Covered Entity" shall mean the above captioned Claimant Agency.
- D. Delinquent Debt. "Delinquent Debt" shall have the same meaning as the term in S.C. Code § 12-56-20.
- E. Department. "Department" shall mean the South Carolina Department of Revenue.
- F. Individual. "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).
- G. Privacy Rule. "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.
 - H. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103 and 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - I. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
 - J. Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his designee.
 - K. Subcontractor. "Subcontractor" shall mean an entity or person authorized under this HIPAA Addendum to receive Protected Health Information from the Business Associate, pursuant to 45 CFR § 164.504(e)(4).

II. Obligations and Activities of Business Associate

1. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement between the Covered Entity and the Business Associate or as Required By Law.

2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

3. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

4. Business Associate agrees to ensure that any agent, including a Subcontractor, to whom it provides Protected Health

Information received from the Covered Entity 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.

5. Business Associate agrees to make any amendment(s) to Protected Health Information that the Covered Entity authorizes and directs on behalf of an individual pursuant to 45 CFR § 164.526 at the request of the Covered Entity and in the time and manner as agreed upon by the Covered Entity and Business Associate.

6. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, and on behalf of the Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner as agreed upon by the Covered Entity and Business Associate or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

7. 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.

8. Business Associate agrees to provide to Covered Entity for an Individual, in time and manner agreed upon by the Covered Entity and Business Associate, information collected in accordance with 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.

III. Permitted Uses and Disclosures by Business Association

1. The purpose of this Agreement is

for the Business Associate to submit claims to the South Carolina Department of Revenue, on behalf of the Covered Entity, for Delinquent Debts incurred by Individuals, pursuant to the Setoff Debt Collection Act, S.C. Code § 12-56-10 (2003), or the Governmental Enterprise Accounts Receivable Program, S.C. Code § 12-4-580. Business Associate may disclose Protected Health Information to such Subcontractors, including Five Star Computing, as may be necessary to provide support for Business Associate's computer requirements in providing support for the Setoff Debt Collection and GEAR programs.

2. Except as otherwise limited in this agreement, Business Associate may use or disclose Protected Health Information received by the Business Associate in its capacity as a Business Associate on behalf of, or to provide services to, Covered Entity:

- a. for the proper management and administration of the Business Associate; or
- b. to carry out the legal responsibilities of the Business Associate.

3. 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 this Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

4. 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 Subcontractor 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 Subcontractor

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

5. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

6. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

7. Business Associate may share Protected Health Information with Third Party Business Associates operating on behalf of the Covered Entity for the purpose of debt collection.

IV. Obligations of Covered Entity

1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Entity

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

Covered Entity.

VI. Term and Termination

1. Term. The Term of this Agreement shall be effective as of the date of the signature of the second party to sign, as indicated below, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity as authorized by Covered Entity 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.

2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall:

a. Provide an opportunity for Business Associate to cure the breach and end the violation within a reasonable time as agreed upon by the Covered Entity and the Business Associate and if the breach cannot be cured, the Covered Entity will allow Business Associate to establish an alternative remedy to cure. If the breach still cannot be cured within the time specified between the Business Associate and the Covered Entity, the Covered Entity may terminate this Agreement; or

b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

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

3. Effect of Termination.

a. Except as provided in paragraph 2 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. 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.

b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon the mutually agreed upon circumstances 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.

VII. Miscellaneous

1. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, to the Setoff Debt Collection Act or the GEAR program means the section as in effect or as amended.

2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

3. Survival. The respective rights and obligations of Business Associate under Section VI. 3. of this Agreement shall survive the termination of this Agreement.

4. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

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

the effective date

Covered Entity:

Name of Covered Entity

by: _____
Signature and Title Date

Business Associate:
South Carolina Association of Counties
by: Michael B. Cone, Executive Director

by: _____
Signature and Title Date