

BUSINESS ASSOCIATE SERVICE TERMS AND CONDITIONS

These Terms and Conditions describe the Service you have selected and set forth provisions governing your use of this Service. These Terms and Conditions are incorporated into and part of the Cash Management Services Master Agreement. By using this Service, you agree to be legally bound by these Terms and Conditions and the Cash Management Services Master Agreement.

BACKGROUND

You are a “covered entity” and, by providing certain services to you under the Agreement, we are a “business associate” of yours, as those terms are defined in the Health Insurance Portability and Accountability Act of 1996, as amended by ARRA, and its corresponding regulations at 45 CFR Parts 160 through 164 (collectively, “HIPAA”).

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I. DEFINITIONS

- 1.1 “ARRA” means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, as amended from time to time, and the regulations promulgated thereunder.
- 1.2 “Business Associate” means any Fulton Financial Corporation banking subsidiary that creates, receives or maintains Protected Health Information on your behalf in the course of performing any Services under the Agreement.
- 1.3 “Covered Entity” means you.
- 1.4 “Electronic Protected Health Information” has the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, limited to the information created or received by us from or on behalf of you.
- 1.5 “HIPAA Breach” has the same meaning as the term “breach” in 45 CFR § 164.402.
- 1.6 “Individual” has the same meaning as the term “Individual” in 45 CFR § 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.7 “Law” means all federal and state statutes, together with their implementing regulations, that are applicable to Services provided by us to you and relate to Protected Health Information.
- 1.8 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.9 “Protected Health Information” has the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by us from or on behalf of you, and including Electronic Protected Health Information.

- 1.10 “*Secretary*” means the Secretary of the Department of Health and Human Services, or his or her designee.
- 1.11 “*Security Incident*” has the same meaning as the term “security incident” in 45 CFR § 164.304.
- 1.12 “*Security Rule*” means the Standards for Security of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- 1.13 “*Transaction Rule*” means the requirements regarding electronic transactions set forth at 45 CFR Parts 160 and 162.
- 1.14 “*Unsecured Protected Health Information*” has the same meaning as the term “unsecured protected health information” in 45 CFR § 164.402, but limited to the information created, received, maintained, or transmitted by us from or on behalf of you.

ARTICLE II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1 We agree not to use or disclose Protected Health Information other than as permitted or required by the Agreement, these Terms and Conditions or by Law.
- 2.2 We agree to use appropriate physical, technical and administrative safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by the Agreement. These safeguards shall include policies reasonably limiting us to the minimum use of Protected Health Information necessary to perform our Services under the Agreement.
- 2.3 We agree to safeguard Protected Health Information maintained in electronic data format in accordance with all applicable federal and state laws and regulations, including the Security Rule.
- 2.4 We agree to conduct our Services in compliance with any standards applicable under the Transactions Rule.
- 2.5 We agree to include in any written agreement with any agent, including a subcontractor, to whom we provide Protected Health Information, a requirement that such agent agree to restrictions and conditions with respect to such information that are at least as restrictive as these Terms and Conditions.
- 2.6 We agree to maintain any documentation required under 45 CFR § 164.530(j) for the periods required thereunder. Upon reasonable notice, we agree to make Protected Health Information and books and records relating to the use and disclosure of Protected Health Information available to the Secretary, at your expense, for purposes of the Secretary determining your compliance with the Privacy Rule and the Security Rule or our compliance with the Privacy Rule and the Security Rule.
- 2.7 If we discover that there has been a HIPAA Breach of Unsecured Protected Health Information, we shall provide written notice to you without unreasonable delay and in no event more than thirty (30) business days after the discovery. To the extent known, the notice shall include identification of each Individual whose Unsecured Protected Health Information we reasonably believe to have been accessed, acquired, or disclosed during such HIPAA Breach. As soon as possible thereafter, and to the extent known, we shall provide you with a description of (i) what happened, including the date of the HIPAA Breach and the date of the discovery, (ii) the types of Unsecured Protected Health Information involved in the HIPAA Breach, (iii) any steps Individuals should take to protect themselves from potential harm from the HIPAA Breach, and (iv) what we are doing to investigate

the HIPAA Breach, to mitigate harm to Individuals, and to protect against any further HIPAA Breaches. For purposes of this paragraph, a HIPAA Breach shall be treated as discovered as of the first day on which the HIPAA Breach is known or should reasonably have been known to us (including any person, other than the one committing the HIPAA Breach that is an employee, officer, or other agent of ours). We shall cooperate in good faith with you in the investigation of any HIPAA Breach of Unsecured Protected Health Information.

- 2.8 In addition to the notification requirements set forth in Section 2.7 above, and with prior notice to you, we shall take (i) reasonable corrective action to remedy any HIPAA Breach; and (ii) mitigate, to the extent practicable, any harmful effect of a use or disclosure of Protected Health Information by us in violation of these Terms and Conditions. We shall refer to you all requests by Individuals for access to, amendment to, restriction of disclosure of, or accounting of disclosures of Protected Health Information.
- 2.9 We agree to document our disclosures of Protected Health Information in a manner that would allow us to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. We have no obligation to document disclosures that are exempt from the accounting requirement, including, but not limited to, disclosures for treatment, payment or healthcare operations.
- 2.10 We agree to provide you with information collected in accordance with Section 2.10, to the extent required to permit you to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

ARTICLE III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1 Except as otherwise limited in these Terms and Conditions, we may use or disclose Protected Health Information as is reasonably necessary to perform functions, activities, or services for, or on behalf of you as specified in the Agreement.
- 3.2 We may use and disclose Protected Health Information for the proper management and administration of our business or to carry out our legal responsibilities, provided that: (i) the disclosure is Required by Law; or (ii) we obtain reasonable assurances from any person to whom the information is disclosed that (a) such information 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 (b) the person will notify us of any instances of which he or she is aware in which the confidentiality of the information has been breached. In the event we are Required by Law to disclose Protected Health Information, we shall promptly notify you of such requirement. We shall give you sufficient opportunity to oppose such disclosure or take other appropriate action before we disclose the Protected Health Information. In the event we are served with legal process or a request from a governmental agency that may potentially require the disclosure of Protected Health Information, we shall promptly notify you, unless such notice is prohibited by law. We shall not disclose the Protected Health Information without your consent unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

ARTICLE IV. OBLIGATIONS OF COVERED ENTITY

- 4.1 You agree not to use or disclose Protected Health Information other than as permitted or required by the Agreement or by applicable Law.

- 4.2 You agree to use reasonable safeguards to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement.
- 4.3 You shall notify us of (i) any changes in your notice of privacy practices that may affect our use or disclosure of Protected Health Information; and (ii) any restriction on the use or disclosure of Protected Health Information, prior to the effective date of such changes or acceptance of such restriction by you in accordance with 45 CFR § 164.522 so that we can determine whether it will be feasible for us to comply with such changes or restriction. Once agreed to, we shall have a reasonable period of time to act on such notice.
- 4.4 You represent and warrant to us that you shall not disclose any Protected Health Information to us unless you have obtained any consents and authorizations that may be required by Law or are otherwise necessary for such disclosure.
- 4.5 You acknowledge that we do not maintain any “designated record sets” within the meaning of 45 CFR § 164.501. You shall not require or request us (i) to provide access to Protected Health Information pursuant to 45 CFR § 164.524; or (ii) to amend to Protected Health Information pursuant to 45 CFR § 164.526.
- 4.6 You acknowledge that we do not maintain any “electronic health records” within the meaning of ARRA and are not subject to the special accounting requirements, set forth in ARRA § 13405(c), for such records. You shall not include us on any list prepared pursuant to ARRA § 13405(c)(3)(B).

ARTICLE V. PERMISSIBLE REQUESTS BY COVERED ENTITY

- 5.1 You warrant that you shall not request us to use or disclose Protected Health Information in any manner that would not be permissible under applicable Law if done by you.

ARTICLE VI. TERM AND TERMINATION

- 6.1 Term. This Service shall continue for as long as Protected Health Information is being created, received or maintained by us on your behalf under the Agreement, or until terminated pursuant to the following. Upon the determination of a material breach of these Terms and Conditions by the other party, the non-breaching party shall have the following rights:
- (a) If the breach is curable, the non-breaching party may provide an opportunity for breaching party to cure the breach or end the violation. Alternatively, or if the breaching party fails to cure the breach or end the violation, the non-breaching party may terminate this Service and the Agreement.
 - (b) If the breach is not curable, the non-breaching party may immediately terminate these Terms and Conditions and the Agreement.
 - (c) If termination is not feasible, the non-breaching party may report the problem to the Secretary.
- 6.2 Effect of Termination. Because it is not feasible for a financial institution to return or destroy Protected Health Information upon termination of the Agreement, we shall continue to protect the confidentiality of Protected Health Information in accordance with these Terms and Conditions for the period of time required under applicable Law, or for as long as we retain the Protected Health Information in accordance with our internal record retention schedule as in effect from time to time,

whichever is shorter, at which time we shall destroy the Protected Health Information in accordance with procedures accepted in the financial services industry for destruction of financial records.

- 6.3 Integration. Except as specifically amended by these Terms and Conditions, all terms of the Agreement remain in effect and shall apply to the activities of us and you described in the Agreement. These Terms and Conditions supersede and replace any prior agreement between the parties which was intended to fulfill the requirements under HIPAA of a business associate agreement.

ARTICLE VII. MISCELLANEOUS

- 7.1 Survival. The respective rights and obligations of both parties set forth under Sections 2.6 through 2.10, and Section 6.2 of these Terms and Conditions shall survive the termination of this Service and/or Agreement.
- 7.2 Notices. Any notices to be given to either party shall be made as provided in the Agreement.