

FlexAmerica, Inc. Business Associate Contract

This Business Associate Addendum ("Addendum"), effective on the later of April 14, 2003 or the Compliance Date (defined in Section 5.3 below) is entered into by and between FlexAmerica, Inc. at 6500 Rock Spring Drive, Suite 105, Bethesda, MD 20817 and _____.

- 1. BACKGROUND AND PURPOSE.** The Parties have entered into one or more contracts which require FlexAmerica, Inc. to be provided with, have access to, and/or create Protected Health Information (PHI) that is subject to the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") and codified at 45 C.F.R. parts 160 and 164 ("Privacy Rule") (the "Underlying Contract(s)"). This Addendum shall supplement and/or amend each of the Underlying Contract(s) only with respect to FlexAmerica, Inc.'s receipt, use and creation of PHI under the Underlying Contract(s) to allow Customer to comply with section §164.502(e) of the Privacy Rule. Except as so supplemented and/or amended, the terms of the Underlying Contract(s) shall continue unchanged and shall apply with full force and effect to govern the matters addressed in this Addendum and in each of the Underlying Contract(s).
- 2. DEFINITIONS.** Unless otherwise defined in this Addendum, all capitalized terms used in this Addendum have the meanings ascribed in the Privacy Rule, provided, however, that
 - 2.1 "PHI"** shall mean **Protected Health Information**, as defined in 45 C.F.R. § 164.501, limited to the information FlexAmerica, Inc. received from or created or received on behalf of Customer as Customer's Business Associate.
 - 2.2 "Electronic PHI"** means PHI that is transmitted by or maintained in an electronic media as that term is defined in 45 CFR 160.103.
 - 2.3 "Security Incident"** means a Security Incident as set forth in 45 CFR 164.304, which generally includes any attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in any information system containing electronic PHI that the Business Associate reasonably and appropriately determines to be a threat or hazard to the confidentiality, availability or integrity of the Health Plan's Electronic PHI."
- 3. OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.**
 - 3.1** Obligations of FlexAmerica, Inc. with regard to its use and/or disclosure of PHI, FlexAmerica, Inc. agrees to:
 - a. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law.
 - b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
 - 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 PHI by Business Associate in violation of the requirements of this Agreement.
 - d. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
 - e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI 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.
 - f. Business Associate agrees to provide access, at the request of Covered Entity, and in a prompt and reasonable manner consistent with the HIPAA regulations, to PHI 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.
 - g. Business Associate agrees to make any amendment(s) to PHI 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 a prompt and reasonable manner consistent with the HIPAA regulations.
 - h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a prompt and reasonable manner consistent with the HIPAA regulations or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
 - i. Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with 45 CFR § 164.528.
 - j. Business Associate agrees to provide to Covered Entity or an Individual, in a prompt and reasonable manner consistent with the HIPAA regulations, information collected in accordance with Section 3.1(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
 - k. **Protection of Electronic PHI.** With respect to Electronic PHI, no later than the Compliance Date for the Security Standards and at all times thereafter, the Business Associate shall: Implement administrative, physical, and technical safeguards, that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic

PHI that the Business Associate creates, receives, maintains, or transmits on behalf of the Plan as required by the Security Standards; Ensure that agents, including any subcontractors, to whom the Business Associate provides such information, agrees to implement reasonable and appropriate safeguards to protect it; and Report to the Plan and the Plan Sponsor, any Security Incident of which it become aware. For this purpose, all reports shall be provided pursuant to the form, procedures and frequency as the Plan and the Business Associate mutually agree from time to time.

- 3.2 Permitted Uses and Disclosures of PHI. Except as otherwise specified in this Addendum, FlexAmerica, Inc. may make any and all uses and disclosures of PHI necessary to perform its obligations under the Underlying Contracts. Unless otherwise limited herein, FlexAmerica, Inc. may:
- a. Use the PHI in its possession for its proper management and administration and to carry out the legal responsibilities of FlexAmerica, Inc. [§164.504 (e)(4)(i)];
 - b. Disclose the PHI in its possession to a third party for the purpose of FlexAmerica, Inc.’s proper management and administration or to carry out the legal responsibilities of FlexAmerica, Inc., provided that the disclosures are required by law or FlexAmerica, Inc. obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule [§164.504 (e)(4)(ii)];
 - c. Provide Data Aggregation services relating to the health care operations of the Customer [§164.504(e)(2)(i)(B)] and
 - d. De-identify any and all PHI obtained by FlexAmerica, Inc. under this Addendum, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule. [§164.502 (d)(1)]
- 4. TERMINATION BY CUSTOMER.** Should Customer become aware of a breach of a material term of this Addendum by FlexAmerica, Inc., the Customer shall provide FlexAmerica, Inc. with written notice of such breach in sufficient detail to enable FlexAmerica, Inc. to understand the specific nature of the breach. Customer shall be entitled to terminate the Underlying Contract associated with such breach if, after Customer provides the notice to FlexAmerica, Inc., FlexAmerica, Inc. fails to cure the breach within a reasonable time period specified by Customer in such notice; provided, however, that such time period specified by Customer shall be based on the nature of the breach involved. [§164.504 (e)(1)(ii)(A), (B)]

5. MISCELLANEOUS.

5.1 Interpretation. The terms of this Addendum shall prevail in the case of any conflict with the terms of any Underlying Contract to the extent necessary to allow Customer to comply with the Privacy Rule. The bracketed citations to the Privacy Rule in several paragraphs of this Addendum are for reference only and shall not be relevant in interpreting any provision of this Addendum.

5.2 No Third Party Beneficiaries. Nothing in this Addendum shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.3 Compliance Date. For the purposes of this Addendum, the Compliance Date is defined as the date on which the Privacy Rule requires compliance by the Customer.

5.4 Amendment. To the extent that any relevant provision of the Privacy Rule is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Addendum to give effect to these revised obligations.

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

FlexAmerica Signature	Date	City of White Plains Signature	Date	Broker Signature	Date
Print FlexAmerica Representative Name		Print Company Representative Name		Print Broker Name	