HIPAA Business Associate Addendum for Producer

Ameritas Life Insurance Corp., Ameritas Life Insurance Corp. of New York

Ameritas

This HIPAA Business Associate Addendum ("Addendum") is entered into between Ameritas Life Insurance Corp. and/or Ameritas Life Insurance Corp. of New York (collectively referred to herein as "Ameritas" and/or "Covered Entity") and the independent agent or broker appointed with Ameritas identified in the signature block below (referred to herein as "Producer" or "Business Associate"). This Addendum supplements and is made a part of the Commission Agreement(s) ("Agreement") between the Parties and sets forth the Producer's responsibilities under HIPAA and HITECH (as defined below) as of September 22, 2014 and thereafter.

Recitals

A. Ameritas is a Covered Entity under HIPAA and HITECH (as defined below) and wishes to disclose certain information to Producer pursuant to the terms of the Agreement, some of which may constitute PHI/EPHI (as defined below).
B. Ameritas and Producer intend to protect the privacy and provide for the security of PHI received, created, used, and disclosed to or by Producer pursuant to the Agreement in compliance with HIPAA and HITECH.
C. As part of the HIPAA and HITECH, the Standards for Privacy and the Standards for Security of Individually Identifiable Health Information codified at 45 CFR Parts 160, 162 and 164 require Ameritas to enter into a contract with Business Associate that includes and imposes on Business Associated specific duties, obligations and requirements with respect to Business Associate's use, disclosure, creation and general handling of Protected Health Information, as set forth in, but not limited to, Title 45, §§ 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and as otherwise provided in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

I. Definitions

A. Specific Definitions.
1. "Breach" shall have the meaning given to such term at 45 CFR § 164.402.
2. "Business Associate" shall mean Producer.
3. "Compliance Date" shall mean, in each case, the date by which compliance with a particular provision is required under HITECH; provided that, in any case for which that date occurs prior to the effective date of this Agreement, the Compliance Date shall mean the effective date of this Agreement.
4. "Covered Entity" shall mean Ameritas.
5. "Data Aggregation" shall have the meaning given to such term at 45 CFR § 164.501.
6. "Designated Record Set" shall have the meaning given to such term at 45 CFR § 164.501.
7. "Electronic Health Record" shall have the meaning given to such term at 42 USC 17921(5).
8. "Electronic Media" shall have the meaning given to such term at CFR §160.103, which is:
   a. Electronic storage media including memory devices in computers (hard drives) and any removable or transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
   b. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet, leased lines, dialup lines, private networks, and the physical movement of removable or transportable electronic storage media. Certain transmissions, including paper, via facsimile, and via telephone, are not considered transmissions via electronic media because the information did not exist in electronic form before the transmission.
9. "Electronic Protected Health Information" (or "EPHI") shall have the meaning given to such term at 45 CFR § 160.103 and is defined as protected health information contained in or transmitted on electronic media received from us or created or received on behalf of us.
10. "Health Care Operations" shall have the meaning given to such term at 45 CFR 164.501.
11. "HIPAA" shall mean the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d through 1320d-8, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.
12. "HITECH" shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act (a.k.a. the ''HITECH Act'') provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954, as amended form time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.
13. "Individual" shall mean the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with the Privacy Rule.
14. "Privacy Rule" shall mean the standard for Privacy of Individually Identifiable Health Information codified at 45 CFR Parts 160 and 164.
15. "Protected Health Information" ("PHI") shall have the meaning given to such term at 45 CFR § 164.304.
16. "Required by Law" shall mean a mandate contained in law that compels a covered entity to make a use or disclosure of PHI and that is enforceable in a court of law.
17. "Security Rule" shall mean the standard for Security of Individually Identifiable Health Information codified at 45 CFR Parts 160, 162 and 164.
18. "Security Incident" shall have the meaning given to such term at 45 CFR § 164.304, which is the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
19. "Subcontractor" shall have the meaning given to such term at 45 CFR § 160.103 and includes any agent/agency relationships.
20. "Unsecured Protected Health Information" (or "unsecured PHI") shall mean Protected Health Information has the meaning as set forth in 45 C.F.R. 164.402.that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the regulations or guidance issued pursuant to 42 U.S.C. §§17932(h)(2).
   b. Catch-all Definition. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule and Security Rule.

2. Obligations of Business Associate.

A. **Permitted Uses.** Business Associate shall not use PHI except for the purpose of performing Business Associate's obligations under the Agreement and as permitted by the Agreement and this Addendum. Further, Business Associate shall not use PHI in any manner that would constitute

a violation of the Privacy Rule if so used by Covered Entity. However, Business Associate may (i) use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, and (ii) provide Data Aggregation services relating to the health care operations of Covered Entity if such services are provided by Business Associate to Covered Entity under the Agreement.

B. **Permitted Disclosures.** Business Associate shall not disclose PHI in any manner that would constitute a violation of HITECH and HIPAA (including without limitation the Privacy Rule) if disclosed by Covered Entity. However, Business Associate may disclose PHI in a manner permitted pursuant to the Agreement and Addendum, for the proper management and administration of Business Associate; and as Required by Law. Additionally, Business Associate may disclose PHI in a manner allowed by law if Covered Entity specifically authorizes the disclosure. In no event shall Business Associate be permitted to receive remuneration, either directly or indirectly, in exchange for PHI, except as may be approved by Covered Entity in its sole discretion and then, only to the extent permitted by 42 U.S.C. § 17935(d). To the extent that Business Associate discloses PHI to a third party, Business Associate must prior to making any such disclosure obtain, (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent it was obtained knowledge of such breach.

C. **Appropriate Safeguards.**
   1. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule and as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316;
   2. Business Associate agrees to ensure that any Subcontractor, to whom it provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect it;
   3. Business Associate will report to Ameritas as soon as reasonably practicable, but not later than five (5) days following discovery: (i) any use or disclosure of protected health information not provided for by this Addendum of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (ii) any security incident affecting EPHI of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C); and
   4. Business Associate agrees to promptly report to Covered Entity any Breach of which it becomes aware as soon as reasonably practicable, but in no event later than five (5) days following Business Associate's discovery of any Breach involving unsecured PHI. The foregoing report shall include identification of each Individual whose PHI Business Associate reasonably believes to have been accessed, acquired, or disclosed during such Breach. As soon as possible thereafter, and to the extent known, Business Associate shall also provide Covered Entity with a description of (i) what happened, including the date of the Breach and the date of the discovery, (ii) the types of unsecured PHI involved in the Breach, (iii) any steps individuals should take to protect themselves from potential harm from the Breach, and (iv) what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches. For purposes of this paragraph, a Breach shall be treated as discovered as of the first day on which the Breach is known or should reasonably have been known to Business Associate (including any person, other than the one committing the Breach, that is an employee, officer, or other agent of the Business Associate).

D. **Restrictions on Disclosures.** Business Associate will restrict its disclosures of the Individual's PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request for restrictions, Business Associate shall forward such request to Covered Entity within 5 business days.

E. **Subcontractors.** Business Associate shall ensure that any Subcontractor, to whom it provides PHI agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI. Business Associate will provide a list of such Subcontractors to Covered Entity upon its request. Business Associate will advise Covered Entity if any such Subcontractor breaches its agreement with Business Associate with respect to the disclosure or use of Protected Health Information or Electronic PHI. Business Associate shall implement and maintain sanctions against Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

F. **Access to Protected Information.** Business Associate shall make PHI maintained by Business Associate or its Subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to 45 CFR Section 164.524.

G. **Amendment of PHI.** Within five (5) days of receipt of a request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, Business Associate or Subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request. Any decision to deny the requested amendment of PHI maintained by Business Associate or its Subcontractors shall be the sole responsibility of Covered Entity.

H. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528. As set forth in, and as limited by, 45 CFR section 164.528, Business Associate shall not provide an accounting to Covered Entity of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.502; (ii) to individuals of PHI about them as set forth in 45 CFR 164.502; (iii) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); or (v) to correctional institutions or law enforcement officials as set forth in 45 CFR Section 164.512(k)(5). Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its Subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis of the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its Subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any PHI except as set forth in Sections 2(b) of this Addendum.

I. **Governmental Access to Records.** Within ten (10) days of receipt of a request Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Covered Entity's compliance with Privacy Rule. Business Associate shall give Covered Entity notice immediately upon receiving any communications from the Secretary that relate to Covered Entity and shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

J. **Minimum Necessary.** Business Associate (and its Subcontractors) shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

K. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

L. **Retention of PHI.** Upon termination of the Agreement for any reason, Business Associate shall return or destroy all PHI that Business Associate or its Subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Sections 2(a), 2(b), 2 (c) and 2 (e) of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

M. **Notification of Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity as soon as reasonably practicable but in no event later than five (5) days following the discovery by Business Associate of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

N. **Audits, Inspections and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its Subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails, to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Addendum.

O. **Electronic Health Record.** In the event that Business Associate in connection with rendering the services under the Agreement uses or maintains an electronic health record of protected health information of or about an individual, the Business Associate will provide an electronic copy of such protected health information in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date. Moreover, in the event that Business Associate uses or maintains an electronic health record of protected Health information of or about an individual, then Business Associate shall make an accounting of disclosures of such protected health information in accordance with the requirements for accounting of disclosures made through an electronic health record in 42 U.S.C. 17935(c), as of its Compliance Date.

P. Business Associate will not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.

Q. Business Associate will not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

R. Pursuant to the Privacy Rule, made applicable to Business Associate by HITECH, Business Associate shall adopt, implement, and follow privacy policies and procedures in the same manner and to the same extent as if it were a Covered Entity.

S. Pursuant to the Security Rule, made applicable to Business Associate by HITECH, Business Associate shall adopt, implement, and follow security policies and procedures in the same manner and to the same extent as if it were a Covered Entity.

T. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

U. **Training.** Business Associate certifies that it has completed, or will complete, a training course as described in 45 CFR 164.530(b) prior to any of Business Associate's employees receiving protected health information pursuant to this Agreement.

3. Obligations of Covered Entity

A. Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Addendum, in accordance with the Covered Entity and requirements of the Privacy Rule, until such PHI is received by Business Associate.

B. 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 PHI.

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

D. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI.

4. Term and Termination

A. **Term.** The Term of this Addendum shall be effective as of the effective date of the Agreement, if later, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.

B. **Material Breach.** A breach by Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by Covered Entity pursuant to the Agreement.

C. **Reasonable Steps to Cure Breach.** If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate the Agreement pursuant to Section 4 (b), then Covered Entity shall take reasonable steps to cure such breach or end such violation, as applicable. If Covered Entity's efforts to cure such breach or end such violation are unsuccessful, Covered Entity shall terminate the Agreement.

D. **Judicial or Administrative Proceedings.** Either party may terminate the Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any requirement of HIPAA, HITECH or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

5. **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or HITECH will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. **Certifications.** To the extent Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA and HITECH relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, HITECH or this Addendum.

7. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the Covered Entity and requirements of HIPAA (including without limitation the Privacy Rule), HITECH and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the Covered Entity and requirements of HIPAA (including without limitation the Privacy rule), HITECH or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the Covered Entity and requirements of HIPAA, including without limitation the Privacy Rule, and HITECH.

8. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any Subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employers based upon a claimed violation of HIPAA, including without limitation the Privacy Rule, HITECH or other laws relating to security and privacy, except where Business Associate or its Subcontractor, employee or agent is a named adverse party.

9. **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.

11. **Indemnification.** In addition to any indemnification obligations, which are a part of the Service Agreement, the Business Associate hereby indemnifies and agrees to hold the Covered Entity harmless against any and all claims, costs or damage, including Civil Monetary Penalties, arising from a breach by the Business Associate of its obligations in connection with this Amendment or HITECH, or HIPAA.

12. **Insurance.** Business Associate agrees to maintain insurance coverage against the improper use and disclosure of PHI by Business Associate. Promptly following a request by Covered Entity, Business Associate will provide a certificate evidencing such insurance coverage.

13. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and HITECH. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HITECH.

14. **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

15. **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

16. **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

Ameritas Life Insurance Corp.
on behalf of itself and its corporate affiliate,
Ameritas Life Insurance Corp. of New York

By: Karen M. Gustin
Karen M. Gustin

Title: Executive Vice President, Group Division

Date: September 22, 2014 and after

Producer

Corp. Name (if any): _____
(print)

Producer Name: _____
(print)

Agent # or SSN/TIN: _____

Signed: _____

Date: _____