

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), is entered into by and between Canfield Imaging Systems (“Canfield”), with an address at 253 Passaic Avenue, Fairfield, New Jersey 07004 and their customer (the “Customer”), (each a “Party” and collectively the “Parties”); and defines the terms and conditions pursuant to a Business Associate Agreement as required by the Privacy and Security Rules, 45 CFR Parts 160 , 162 and 164, of the Health Insurance Portability and Accountability Act of 1996.

Background

WHEREAS, Canfield is in the business of producing, selling, installing, and supporting medical imaging software, and in the normal course of installation and support of said software will, from time to time, have access to protected health information, and

WHEREAS, Customer has purchased software and a Support Agreement from Canfield, and acknowledges Canfield’s need for occasional access to protected health information in the furtherance of its support activities.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

Agreement

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

- 1.1. 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).
- 1.2. 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.
- 1.3. Security Rule. “Security Rule” shall mean the Health Insurance Reform: Security Standards at 45 CFR Parts 160, 162 and 164.
- 1.4. Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Canfield from or on behalf of Customer.
- 1.5. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.
- 1.6. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Canfield

- 2.1. Canfield agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- 2.2. Canfield agrees to use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 2.3. Canfield agrees to protect the confidentiality, integrity and availability of electronic Protected Health information that it creates, receives, maintains or transmits on behalf of Customer.
- 2.4. Canfield agrees to mitigate, to the extent practicable, any harmful effect that is known to Canfield of a use or disclosure of Protected Health Information by Canfield in violation of the requirements of this Agreement.
- 2.5. Canfield agrees to report to Customer any use or disclosure of the Protected Health Information not provided for by this Agreement.
- 2.6. Canfield agrees to report to Customer any “security incident” of which it becomes aware, as such term is defined in the HIPAA Security Rule.
- 2.7. Canfield agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from Customer, or created by Canfield on behalf of Customer, agrees to the same restrictions and conditions that apply through this Agreement to Canfield with respect to such information.
- 2.8. Canfield agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Canfield on behalf of Customer, available to Customer, or at the request of the Customer to the Secretary, in a time and manner designated by the Customer or the Secretary, for purposes of the Secretary determining Customer’s compliance with the Privacy Rule.
- 2.9. Canfield agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.10. Canfield agrees to provide to Customer or an Individual, in time and manner designated by Customer, information collected in accordance with this Agreement, to permit Customer to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Canfield

- 3.1. Except as otherwise limited in this Agreement, Canfield may use or disclose Protected Health Information on behalf of, or to provide services to, Customer for the purpose of Installation and/or Support of Canfield’s software, and associated equipment or licensed software, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Customer.

- 3.2. Except as otherwise limited in this Agreement, Canfield may disclose Protected Health Information, provided that disclosures are required by law, or Canfield obtains reasonable assurances from the person 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 person notifies Canfield of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Obligations of Customer

- 4.1. Customer shall provide Canfield with the notice of privacy practices that Customer produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- 4.2. Customer shall provide Canfield with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Canfield's permitted or required uses and disclosures.
- 4.3. Customer shall notify Canfield of any restriction to the use or disclosure of Protected Health Information that Customer has agreed to in accordance with 45 CFR § 164.522.

5. Permissible Requests by Customer

Customer shall not request Canfield to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Customer.

6. Term and Termination

- 6.1. Term. Unless otherwise terminated by either Party, this Agreement shall become effective as of the Effective Date.
- 6.2. Termination for Cause. Upon knowledge of a material breach by Canfield, Customer shall provide an opportunity for Canfield to cure the breach or end the violation and terminate this Agreement and any related Agreement. If Canfield does not cure the breach or end the violation within the time specified by Customer, or immediately terminate this Agreement and any related Agreement, or if Canfield has breached a material term of this Agreement and cure is not possible.
- 6.3. Effect of Termination. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Canfield shall return or destroy all Protected Health Information received from Customer, or created or received by Canfield on behalf of Customer. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of Canfield. Canfield shall retain no copies of the Protected Health Information. In the event that Canfield determines that returning or destroying the Protected Health Information is infeasible, Canfield shall provide to Customer, notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Canfield 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 Canfield maintains such Protected Health Information.

7. Miscellaneous

- 7.1. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Customer to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- 7.2. Survival. The respective rights and obligations of Canfield under Section 6.3 of this Agreement shall survive the termination of this Agreement.
- 7.3. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Customer to comply with the Privacy Rule.

8. Entire agreement

This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in any way modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

9. Limitation of liability

Except for fraud and intentional misrepresentations, no party shall be liable for any special, consequential, punitive, exemplary, incidental or indirect damages, costs, expenses, charges or claims.