

# TERMS OF USE

These Terms of Use and the below Business Associate Agreement (collectively the “Agreement”) govern the terms and conditions of your use of and access to the websites and applications provided by **Bliss Media, Inc.**, a Minnesota corporation (“Bliss”), including, but not limited to the Appeal Maker program. Please read this Agreement carefully. **By clicking “I AGREE”, you acknowledge that you have read, understand, agree to and accept the terms and conditions contained in this Agreement in their entirety and are legally bound to this Agreement’s terms and conditions.**

- 1. Marketing Services.** By placing any order through Bliss’ websites and applications, you retain Bliss to perform certain direct mail campaign services (the “Services”) pursuant to this Agreement’s terms and conditions.

Bliss will not at any time receive, have control over or custody of any funds, assets or property solicited for charitable purposes. You acknowledge and agree that the Services shall not include and Bliss shall not receive, have access to or control funds, assets or property solicited for charitable purposes, or employ, procure or engage any compensated person to receive, have access to or control funds, assets or property for charitable purposes.

- 2. Fees and Expenses.** You shall pay the total fees designated by Bliss at checkout in order to complete your order (collectively the “Service Fee”). You represent and warrant that all information you provide to Bliss, including, but not limited to any payment information, is accurate and complete and that you have the legal right to use the information to make payments to Bliss. You agree to pay any and all applicable sales, use, transfer, excise and any and all other taxes, if any, however designated, which are levied or imposed as a result of the Services, with the exception of Bliss’ income taxes. You acknowledge and agree that any Service Fees shall, under all circumstances, be non-refundable. In the event you wish to claim a tax exemption or reduced postage rate, you must provide any and all evidence and completed forms Bliss requests and requires evidencing such exemption and/or reduced postage rate.

Any cost estimate, price and Service Fee reflected on Bliss’ website or applications are subject to change from time to time and any price quote provided to you is subject to review and change if it is not accepted by you through completion of an order at checkout.

- 3. Use of Bliss Website and Applications.** You may only use Bliss’ website, applications and any programs and materials pursuant to all applicable laws and regulations and not otherwise for any illegal or improper purpose. You agree that except as otherwise provided within this Agreement, Bliss’ website and any programs, applications and materials provided to you by Bliss are the property of Bliss or Bliss’ licensors and as such, you agree not to copy, reverse engineer, transmit, sell or license any portion of Bliss’ website or any programs and applications Bliss provides to you. You agree not to do any of the following while using Bliss’ website and any programs, applications or materials provided to you by Bliss: violate any applicable law or regulation; or upload any material that is unlawful, obscene, infringes on any third party’s proprietary rights, or includes any confidential information, trade secrets or any viruses, worms, defects or other destructive items.

In the event you create an account with Bliss, you are solely responsible for safeguarding your password and log on information. You shall be responsible for any and all activity that occurs under your account. Under no circumstance shall Bliss be liable for any third party use of your account. Under no circumstance shall anyone under the age of 18 create an account or place an order with Bliss. By creating an account and placing an order you warrant and represent that you are at least 18 years old and have the authority to place an order with Bliss.

- 4. All Orders are Final.** Once you have made payment and completed an order with Bliss, no subsequent revisions may be made to the direct mailing materials or information submitted to Bliss, without Bliss' written consent. Bliss may condition written consent on your payment of additional funds to cover any additional costs and expenses to make such a change, including, but not limited to administrative, materials or overhead costs and expenses. Under no circumstance shall Bliss be required to accept any change after your completion of an order.
- 5. Termination.** Bliss may terminate your access to its website or use of Bliss' applications at any time, with or without cause and with or without prior notice. Without limiting any of the foregoing, Bliss may terminate your access if you violate any of this Agreement's terms. Upon termination, you shall have no further access to Bliss' website or applications and Bliss may delete any and all information, files and materials you may have submitted or uploaded to Bliss and Bliss shall have no obligation to return or save any such information or files, except as otherwise required by applicable law.
- 6. Supplied Content and Information.** You shall provide any and all trademarks, logos, trade names, photographs, graphics, text, illustrations, data, databases, donor contact information, donor demographic information and other information to the extent you deem reasonably necessary (collectively the "Client Content") for any mailings and other materials (the "Deliverables") created as part of your use of Bliss' website, application or Services. You grant Bliss a royalty free, non-exclusive license for this Agreement's term to utilize the Client Content in furtherance of the Services and creation of the Deliverables pursuant to this Agreement's terms. Bliss' performance of the Services as provided within this Agreement is strictly contingent on you providing Bliss the Client Content reasonably necessary to perform the Services. Under no circumstance shall Bliss be responsible for any error or omission within any of your supplied Client Content.

You are strongly advised to retain original copies of all provided Client Content. Except as otherwise provided within the Business Associate Agreement between you and Bliss, under no circumstance shall Bliss be responsible for any liabilities, damages or other costs and expenses incurred because of lost, stolen or damaged Client Content. Any additional translating, editing, or programming needed to utilize the Client Content shall be charged to you at Bliss' current rates.

You warrant and represent that: (i) you are the sole owner of the Client Content or otherwise have permission and consent to utilize the Client Content; (ii) you have obtained all patient authorizations required under applicable regulations and law to utilize the Client Content for the Services, including, but not limited to any and all authorizations required under the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); (iii) you shall promptly inform Bliss with respect to any limitation on the use of the Client Content, including, but not limited to any termination or opt out of any authorization allowing Bliss to utilize the Client Content; (iv) you have the right and ability to grant Bliss the license provided hereunder; (v) the Client Content is not copyrighted or otherwise protected or restricted by a third party or otherwise if it is, you have obtained all requisite permissions and licenses to allow Bliss to perform the Services using the Client Content pursuant to this Agreement's terms; and (vi) the Client Content does not contain anything that is libelous, scandalous or illegal or anything that threatens anyone's right to privacy or other personal or economic rights. Bliss reserves the right to refuse to print or utilize anything that it deems, in its sole and absolute discretion, illegal, libelous, scandalous, improper, infringing under copyright law or otherwise in violation of any other applicable law.

You shall indemnify, defend and hold Bliss, its subsidiaries, affiliates, officers, agents, employees and shareholders harmless from and against any and all claims, damages, liabilities, fines, civil penalties, costs and expenses (including reasonable attorneys' fees and court costs) which arise out of or are directly related to: (i) Bliss's use of the Client Content as provided for under this Agreement; (ii) any actual or threatened claims of third parties that Bliss' use of the Client Content for the Services infringes any intellectual property or other rights of any third parties; or (iii) your misrepresentation or breach of any of your warranties, representations and obligations under this Agreement.

- 7. Delivery and Transmission.** Under no circumstance shall Bliss be liable or responsible for late delivery or misdelivery due to your submission of inaccurate or incomplete materials or information or your failure to adhere to any other term or provision within this Agreement. In addition to the foregoing, Bliss shall not, under any circumstance, be liable for delays caused by a carrier or damages while the Deliverables are in transit. Bliss shall not be liable for any errors, omissions or extra costs resulting from faults in any electronic or telecommunication transmission, including, but not limited to file transfer protocol and electronic mail transmission or any other form of electronic transmission, including failure of your internet service provider or connection or failure due to any virus, worm, trojan horse, spyware, malware or other defects or destructive materials, which disrupt, damage or stop successful completion of any order.
- 8. Ownership of Deliverables.** Bliss acknowledges and agrees that title to the Deliverables shall pass to you upon delivery of the Deliverables to the carrier at Bliss' location. Notwithstanding the foregoing, you acknowledge and agree that Bliss shall retain a royalty-free, world-wide, non-exclusive, transferrable and perpetual license to utilize any custom designs, layouts, backgrounds, fonts or other elements of the Deliverables provided or developed as part of the Services to create the Deliverables. In addition, Bliss shall retain the rights in any and all right, title and interest in and to any designs, layouts, backgrounds, fonts or other elements of the Deliverables that Bliss may have previously designed, modified or provided and made available to you to perform the Services and provide the Deliverables under this Agreement. You also acknowledge and agree that Bliss may at all times utilize examples of the Deliverables as part of Bliss's own portfolio and marketing materials. It is your sole responsibility to retain and maintain any and all original files provided as part of the Services and creation of the Deliverables under this Agreement. Under no circumstance shall Bliss be liable for lost, stolen or damage to files provided as part of the Services or for the accuracy of furnished input or final output.
- 9. State and Federal Registrations.** You shall be solely responsible for and shall pay for any and all costs, expenses or other obligations for registering as a charity at the Federal level and within any required states. You shall indemnify, defend and hold Bliss harmless with respect to any and all claims, liabilities, actions, causes of action, fines, damages and costs and expenses (including court costs and reasonable attorneys' fees) incurred by Bliss which arise out of or are related to your failure to register pursuant to this Agreement. You and Bliss acknowledge and agree that you shall cooperate with Bliss to add any required additional information or addenda to this Agreement necessary for each party's registration as a charity or a professional solicitor with any applicable state and Federal authorities prior to Bliss performing the Services.
- 10. Proof Approvals.** Prior to finalizing and placing your order for the Deliverables, you are instructed to carefully review your order and make any necessary corrections to the order prior to finalizing and completing the order. Be aware that from time to time Bliss may update its products, templates or structure within its website, programs and applications, which may cause program and application enhancements to shift or modify any previous content or layout. You are strongly encouraged to review your order and make any necessary corrections before finalizing and completing the order, even if your order consists of a re-order of previously produced Deliverables. Bliss shall not be responsible for any errors within the Deliverables if the Deliverables are printed per your order. You acknowledge and agree that because of differences in equipment, computer and monitor display settings, processing, proofing substrates, paper-inks, and other conditions, a reasonable variation may occur in color between the electronic on-screen example of the Deliverable and the actual Deliverables. You acknowledge and agree that Bliss shall not be responsible or liable for such minor variations.

**11. Confidentiality.** You and Bliss agree to hold each other's proprietary and/or confidential information in strict confidence and to not disclose such information to any third party or to use each other's proprietary or confidential information for any other purpose other than as provided within this Agreement. Each party shall retain sole ownership of its proprietary and confidential information and shall return such confidential information to the other party upon this Agreement's termination.

Notwithstanding the foregoing, the parties acknowledge and agree that the confidential information protected under this Agreement shall not include any and all reports and analysis generated by Bliss as a part of the Services, which does not otherwise include any information which identifies or which could be used to identify you as the source or subject of such reports and information. Bliss may utilize any and all such reports and analysis in furtherance of Bliss' business and other services it may provide to you or to third parties, as long as Bliss does not disclose or utilize any information which could be used to identify you as the source of subject of such information.

**12. Relationship of Parties.** Notwithstanding any provision within this Agreement to the contrary, for all of this Agreement's purposes, the relationship of Bliss to you shall be that of an independent contractor and not as partner, joint venturer or agent. Under no circumstance shall either party have the right to bind or attempt to bind the other to any contract. Each party acknowledges its separate responsibility for all federal and state income and withholding taxes, workers' compensation, unemployment compensation and other taxes, and agrees to defend, indemnify and hold the other harmless from and against any claim or liability therefore. Neither party will, by virtue of this Agreement, be entitled or eligible to participate in any benefits or privileges given or extended by the other to its officers or other employees.

**13. WARRANTIES/LIMITATION OF LIABILITY.** Bliss warrants and represents that it has the skill and experience necessary to complete the Services in a timely and professional manner pursuant to the parameters and term set forth within this Agreement. EXCEPT AS SPECIFICALLY WARRANTED IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, BLISS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OR REPRESENTATIONS (EXPRESS OR IMPLIED), INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

You acknowledge and agree that, to the extent permitted by applicable law, Bliss' sole liability for any default under this Agreement's terms shall be strictly limited to the total Service Fee actually received by Bliss from you and shall not extend to the cost of materials supplied by you or any postage paid for the mailing of any printed material.

NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT OR ITS CONDUCT PURSUANT TO THIS AGREEMENT, FOR ANY LOST PROFITS OR REVENUE OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, OR LOST DATA) HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT OR OTHER THEORY OF LIABILITY. IT IS ACKNOWLEDGED BY THE PARTIES THAT NOTHING IN THIS SECTION SHALL LIMIT A PARTY'S OBLIGATION TO PAY AMOUNTS ALREADY DUE AND OWING TO THE OTHER PARTY.

In addition to the foregoing, under no circumstance shall Bliss be liable for any breach or failure caused by any failure in third party services, misuse of the Deliverables, your negligence or any other cause outside of Bliss' reasonable control.

- 14. Claim for Defects.** You must make any claim for defects, damages or shortages in a writing delivered to Bliss within ten (10) days after delivery of the Deliverables. If no claim is made within such time period, delivery of the Deliverables shall be deemed to be your irrevocable acceptance that the Deliverables comply with all of your terms, conditions and specifications.
- 15. Force Majeure.** Neither party shall be responsible for any delay or failure in performance, except with respect to obligations to make payments hereunder for Services previously performed, to the extent that such delay or failure was caused by a force majeure event, including, energy failure, delays of suppliers or carriers, internet service providers, action of government or civil authority, an act of God, war, civil disturbance, governmental action, labor dispute unrelated to the party claiming the force majeure event, computer virus, malware, spyware, trojan horse or any other event beyond the reasonable control of the claiming party. Performance of this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to any time schedule to complete the Services.
- 16. Amendment.** Bliss may revise and update this Agreement from time to time in its sole discretion, and will post any updates on its website. Your continued use of Bliss' website or the services provided through the website means you accept and agree to the modified Agreement.
- 17. Miscellaneous.** This Agreement may not be assigned without both parties' prior, written consent. The failure of a party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege shall not be construed as waiving any such provision and the same shall continue in force. If any provision of this Agreement is found to be void, the remainder of this Agreement shall survive and remain in full force and shall not be terminated. This Agreement contains the entire understanding of Bliss and you and supersedes all prior agreements, whether written or oral relating to the subject matter hereof. This Agreement shall be governed in all respects by the laws of the State of Minnesota. The parties (i) consent to the personal jurisdiction of the state and federal courts located in Minnesota in connection with any controversy related to this Agreement, (ii) waive any argument that venue in such forum is not convenient, and (iii) agree that any litigation related to this Agreement shall be venued in Stearns County, Minnesota, or the appropriate Federal District Court in Minnesota. This Agreement's terms and conditions shall survive this Agreement's termination.

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement, in addition to the above Terms of Use, governs the terms and conditions of your use of and access to the websites and applications provided by Bliss, including, but not limited to the Appeal Maker program. Please read this Business Associate Agreement carefully. **By clicking "I AGREE", you acknowledge that you have read, understand, agree to and accept the terms and conditions contained in this Business Associate Agreement in their entirety and are legally bound to this Business Associate Agreement's terms and conditions.**

### **RECITALS**

- A. By clicking on "I Agree" and placing an order with Bliss through Bliss' website and applications, you have engaged Bliss or will engage Bliss to perform certain services.



B. Bliss and you agree to this Business Associate Agreement's terms and conditions to the extent you are a "covered entity" as defined in 45 Code of Federal Regulations ("CFR") Part 160.103 and possesses certain Protected Health Information that is protected under HIPAA and HITECH Act (as hereinafter defined).

C. As part of the services Bliss will be providing to you, Bliss may perform functions or services on your behalf that may involve the use, disclosure, transmission or maintenance of Protected Health Information created or received by Bliss on your behalf.

D. To the extent Bliss will perform functions or services on your behalf that involve the use, disclosure, transmission or maintenance of Protected Health Information, you and Bliss wish to enter into this Business Associate Agreement to satisfy applicable requirements of HIPAA and HITECH that you obtain written assurances that Bliss will appropriately safeguard such Protected Health Information.

1. **Definitions.** Bliss and you agree that the capitalized terms used, but not otherwise defined in this Business Associate Agreement, shall have the meanings ascribed to such terms by the Health Insurance Portability and Accountability Act of 1995 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, including 45 CFR Part 160 and Part 164 (collectively, "HIPAA Rules").

2. **Bliss Obligations and Activities.** Bliss agrees to:

- a. Not use or disclose Protected Health Information other than as permitted by this Business Associate Agreement, the Terms of Use and as required by applicable law;
- b. Use reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this Business Associate Agreement;
- c. Report to you any use or disclosure of Protected Health Information not provided for by this Business Associate Agreement of which Bliss becomes aware, including incidents of breaches of unsecured Protected Health Information within thirty (30) days after discovery of such use or disclosure;
- d. You acknowledge and agree that Bliss may utilize subcontractors who may receive Protected Health Information to carry out its duties pursuant to the Terms of Use; in the event Bliss utilizes subcontractors to carry out its duties under the Terms of Use, Bliss shall ensure in writing that any subcontractors that create, receive, maintain or transmit Protected Health Information on Bliss' behalf, agree to the same restrictions, conditions and requirements that apply to Bliss with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable;
- e. Make available Protected Health Information in a Designated Record Set to the individual or you as necessary to satisfy your obligations under 45 CFR 164.524;
- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by you or an individual pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy your obligations under 45 CFR 164.526;
- g. Maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy your obligations under 45 CFR 164.528 and HITECH Act;
- h. To the extent Bliss is to carry out one or more of your obligation(s) under Subpart E of

45 CFR Part 164, comply with the requirements of Subpart E that apply to you in the performance of such obligation(s);

- i. Make Bliss' internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules;
- j. Report to you promptly upon becoming aware of any security incident involving Protected Health Information in electronic form; provided, however, that the parties acknowledge and agree that all attempted but unsuccessful security incidents need not be reported to you, and that this Business Associate Agreement shall constitute notice to you that unsuccessful security incidents occur periodically. Unsuccessful security incidents shall include, but not be limited to, pings and other broadcast attacks on Bliss' firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as such incidents do not result in actual unauthorized access, use or disclosure of Protected Health Information; and
- k. Mitigate, to the extent reasonably practicable, any harmful effect that is known to Bliss, which is directly related to any breach of this Business Associate Agreement by Bliss resulting in an unauthorized use or disclosure of unsecured Protected Health Information.

### **3. Permitted Uses and Disclosures by Bliss.**

- a. Bliss may use or disclose Protected Health Information to perform the services set forth in the Terms of Use pursuant to this Business Associate Agreement and as required by law. Notwithstanding anything within this Business Associate Agreement to the contrary, you acknowledge and agree that Bliss may retain and utilize Protected Health Information to evaluate the services provided to you pursuant to the Terms of Use and for other internal analysis as long as Bliss complies with this Business Associate Agreement's terms and conditions.
- b. Bliss may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by you.
- c. Bliss may disclose or use Protected Health Information for the proper management and administration of Bliss or to carry out the legal responsibilities of Bliss, provided the disclosures are required by law, or Bliss obtains reasonable assurances from the person to whom the information is disclosed that (i) the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and (ii) the person notifies Bliss of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Bliss may provide Data Aggregation Services relating to the health care operations of you.
- e. Bliss may use Protected Health Information to create limited data sets and use or disclose the limited data sets for research, public health or health care operations purposes. The restrictions regarding the use and disclosure of Protected Health Information contained in this Business Associate Agreement shall apply to Bliss' use and disclosure of any Protected Health Information contained in any limited data sets. Bliss shall not identify the information contained in the limited data sets or contact the individuals who are the subject of the Protected Health Information contained in such limited data sets, except as otherwise permitted or regulated by this Business Associate Agreement or HIPAA.

- f. Bliss may de-identify any and all Protected Health Information pursuant to HIPAA requirements. The parties acknowledge that such de-identified data does not constitute Protected Health Information and is not subject to this Business Associate Agreement's terms.
- g. Consistent with HIPAA, Bliss may use Protected Health Information to report any violations of law to the appropriate Federal and state authorities.

**4. Provisions for You to Inform Bliss of Privacy Practices and Restrictions.**

- a. You shall promptly notify Bliss of any limitation(s) in your notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Bliss' use or disclosure of Protected Health Information.
- b. You shall promptly notify Bliss of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Bliss' use or disclosure of Protected Health Information.
- c. You shall promptly notify Bliss of any restriction on the use or disclosure of Protected Health Information that you have agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Bliss' use or disclosure of Protected Health Information.
- d. You agree to ensure that you obtain individual's permission or the permission of individual's personal representatives, to the extent required under HIPAA Rules and in the form required by HIPAA Rules, for Bliss' use and disclosure of Protected Health Information contemplated by this Addendum and the Terms of Use and to inform Bliss of any changes in, or withdrawal of, such written permission provided to you by individuals pursuant to 45 CFR 164.508.

**5. Permissible Requests by You.**

- a. You shall not request Bliss to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by you.

**6. Term and Termination.**

- a. Term. This Business Associate Agreement's Term shall be effective as of the date you click "I Agree" evidencing your consent to this Business Associate Agreement's terms and conditions, and shall continue as long as Bliss uses, discloses, creates or otherwise possesses any Protected Health Information created or received on your behalf and until all Protected Health Information created or received by Bliss on your behalf is destroyed or otherwise returned to you pursuant to this Business Associate Agreement's terms.
- b. Termination for Cause. In addition to the foregoing, this Business Associate Agreement may be terminated if a party determines that the other party has violated a material term of the Business Associate Agreement and the breaching party has not cured the breach or ended the violation within 30 days of the breaching party's receipt of written notice from the non-breaching party regarding such breach.
- c. Obligations of Bliss upon Termination.
  - i. Upon termination of this Business Associate Agreement for any reason, Bliss



shall, to the extent reasonably feasible, return to you or destroy all Protected Health Information received from you, or created, maintained, or received by Bliss on your behalf, that Bliss still maintains in any form. Bliss shall retain no copies of the Protected Health Information, with the exception of the Protected Health Information Bliss reasonably needs to obtain for its own management and administration or to carry out its legal responsibilities.

- ii. Upon termination of this Business Associate Agreement for any reason, Bliss, with respect to Protected Health Information received from you, or created, maintained, or received by Bliss on your behalf, shall:
  1. Retain only that Protected Health Information which is necessary for Bliss to continue its proper management and administration or to carry out its legal responsibilities;
  2. Return to you or, destroy the remaining Protected Health Information that Bliss still maintains in any form;
  3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Bliss retains the Protected Health Information;
  4. Not use or disclose the Protected Health Information retained by Bliss other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 3(c) and (d) above under "Permitted Uses and Disclosures By Bliss" which applied prior to termination; and
  5. Return to you or destroy the Protected Health Information retained by Bliss when it is no longer needed by Bliss for its proper management and administration or to carry out its legal responsibilities.
- iii. Notwithstanding the foregoing, upon this Business Associate Agreement's termination, if Bliss believes that returning or destroying the Protected Health Information is not feasible, Bliss may keep the Protected Health Information, but will extend all protections, limitations and restrictions of this Business Associate Agreement to Bliss' use or disclosure of the Protected Health Information retained after this Business Associate Agreement's termination and will limit further uses or disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible. Bliss will also ensure that any such extended protections, limitations and restrictions apply to its subcontractors for whom return or destruction of Protected Health Information is determined by Bliss to be infeasible.
- d. Survival. Bliss' obligations under this Section shall survive this Business Associate Agreement's termination.

## **7. Miscellaneous**

- a. Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. You and Bliss agree to take such action as is reasonably necessary to amend this Business Associate Agreement from time to time as is reasonably necessary for compliance with the requirements of the HIPAA Rules and any other

applicable law.

- c. Interpretation. Any ambiguity in this Business Associate Agreement shall be interpreted to permit compliance with HIPAA and the HIPAA Rules.
- d. No Third Party Beneficiaries. Nothing express or implied in this Business Associate Agreement is intended or shall be deemed to confer upon any person other than you and Bliss, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- e. Limitation of Liability. Covered Entity acknowledges and agrees that, to the extent permitted by applicable law, Business Associate's sole liability to Covered Entity for any default under this Agreement's terms shall be strictly limited to the total Service Fee actually received by Business Associate from Covered Entity and shall not extend to the cost of materials supplied by Covered Entity or any postage paid for the mailing of any printed material.

NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT OR ITS CONDUCT PURSUANT TO THIS AGREEMENT, FOR ANY LOST PROFITS OR REVENUE OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, OR LOST DATA) HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT OR OTHER THEORY OF LIABILITY. IT IS ACKNOWLEDGED BY THE PARTIES THAT NOTHING IN THIS SECTION SHALL LIMIT A PARTY'S OBLIGATION TO PAY AMOUNTS ALREADY DUE AND OWING TO THE OTHER PARTY.

In addition to the foregoing, to the extent permitted under applicable law, under no circumstance shall Business Associate be liable for any breach or failure caused by any failure in third party services, Covered Entity's negligence or any other cause outside of Business Associate's reasonable control.