

Business Associate Contract

This Agreement is entered into on _____ between _____ (“COVERED ENTITY”) and _____ (“BUSINESS ASSOCIATE”).

Whereas, COVERED ENTITY will make available and/or transfer to BUSINESS ASSOCIATE Protected Health Information (PHI), in conjunction with goods or services that are being provided by BUSINESS ASSOCIATE to COVERED ENTITY, that is confidential and must be afforded special treatment and protections.

Whereas, BUSINESS ASSOCIATE will have access to and/or receive from COVERED ENTITY Protected Health Information that can be used or disclosed only in accordance with this Agreement and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Parts 160 and 164).

Whereas, COVERED ENTITY must have a valid business associate contract/agreement in effect in order to comply with the HIPAA Privacy Rule when providing BUSINESS ASSOCIATE access to PHI.

NOW THEREFORE, COVERED ENTITY AND BUSINESS ASSOCIATE agree as follows:

1. Definitions

- (a) *Business Associate*. “BUSINESS ASSOCIATE” shall mean _____.
- (b) *Covered Entity*. “COVERED ENTITY” shall mean _____
Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR & 164.502 (g).
- (c) *HIPAA Privacy Rule*. “HIPAA 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.
- (d) *Protected Health Information*. “Protected Health Information” (also referred to as PHI) shall have the same meaning as the term “protected health information” in 45 CFR & 164.501, limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of COVERED ENTITY.
- (e) *Required by Law*. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR & 164.501.
- (f) *Secretary*. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

Other terms used in the Agreement, but not defined above shall be defined as they are defined in HIPAA Privacy Rule.

2. Obligations and Activities of BUSINESS ASSOCIATE

BUSINESS ASSOCIATE agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement.
- (c) Mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE in violation of the requirements of the Agreement.
- (d) Report to COVERED ENTITY any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Ensure that any agent, including a subcontractor, to whom it provided Protects Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITIY agrees to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such information.
- (f) Provide access, at the request of COVERED ENTITY, and in a timely manner to Protected Health Information 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) Make any amendment(s) to Protected Health Information 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 timely manner.
- (h) Make internal practices, books and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of, COVERED ENTITIY available [to the COVERED ENTITY, or] to the Secretary, in a timely manner or designated by the Secretary, for purposes of the Secretary determining COVERED ENTITY'S compliance with the HIPAA Privacy Rule.
- (i) Document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR & 164.528.
- (j) Provide to COVERED ENTITY or an Individual, in a timely manner information collected in accordance with Section 2 (I) of the Agreement, to permit COVERED ENTITY 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 BUSINESS ASSOCIATE

(a) General Use and Disclosure Provisions [Select an alternative.]

- Except as otherwise limited in the Agreement, BUSINESS ASSOCIATE may use or disclose Protected Health Information on behalf of, or to provide services to, COVERED ENTITY for the following purposes, if such use or disclosure of Protected Health Information would not violate the HIPAA Privacy Rule if done by COVERED ENTITY.

All billing operations, typing of protected health information, typing of report, making telephone calls and other routine clerical tasks.

- * Refer to underlying services agreement/contract
Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, COVERED ENTITY as specified in this agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by COVERED ENTITY or the minimum necessary policies and procedures of the COVERED ENTITY.
- Except as otherwise limited in the Agreement, BUSINESS ASSOCIATE may use Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.
- Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE, provided that disclosures are Required by Law, or BUSINESS ASSOCIATE 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 the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information had been breached.
- Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data

Aggregation services to COVERED ENTITY as permitted by 42 CFR & 164.504 (e)(2)(i)(B).

4. Obligations of COVERED ENTITY

Provisions for COVERED ENTITY to inform BUSINESS ASSOCIATE of Privacy Practices and Restrictions.

COVERED ENTITY shall:

- i. 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 Protected Health Information.
- ii. Notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by Individual to use or disclose Protected health Information, to the extent that such changes may affect BUSINESS ASSOCIATE's use or disclosure of Protected Health Information.
- iii. Notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of Protected Health Information in any manner that would not be permissible under the HIPAA Privacy Rule if done by the COVERED ENTITY.

5. Term and Termination

1. Term: The Term of this Agreement shall be effective as of April 14, 2003 and shall terminate when all of the Protected Health Information 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 Protected Health Information, in accordance with the termination provisions in this Section.
2. Termination for Cause: Upon COVERED ENTITY's knowledge of a material breach by BUSINESS ASSOCIATE, COVERED ENTITY shall either:
 - i. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and terminate this Agreement if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by COVERED ENTITY;

- ii. Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible; or
 - iii. If neither termination nor cure are feasible, COVERED ENTITY shall report the violation to the Secretary.
- 3. Effect of Termination
 - i. Except as provided in paragraph (“ii.”) of this section, upon termination of this Agreement, for any reason, BUSINESS ASSOCIATE shall return or destroy all Protected Health Information received from COVERED ENTITY, or created or received from COVERED ENTITY, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall retain no copies of the Protected Health Information.
 - ii. In the event that BUSINESS ASSOCIATE determines that returning or destroying the Protected Health Information is infeasible, BUSINESS ASSOCIATE shall provide to COVERED ENTITY notification of the conditions that make return or destruction infeasible. If that return or destruction of Protected Health Information is infeasible, BUSINESS ASSOCIATE 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 BUSINESS ASSOCIATE MAINTAINS SUCH Protected Health Information.

6. Governing Law

This Agreement shall be governed by the laws of .

7. Injunction Relief

Notwithstanding any rights or remedies provided for in this Agreement, COVERED ENTITY retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information by BUSINESS ASSOCIATE or any agent, subcontractor, or third party that received Protected Health Information from BUSINESS ASSOCIATE.

8. Binding Nature and Assignment

This agreement shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonable withheld.

9. Notices

Whenever under this Agreement one party is required to give notice to the other, such notice shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follow:

Either party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address. A change in address does not constitute a change in the nature or intent of the contract.

10. Entire Agreement

This agreement consists of this document and constitutes the entire agreement between the parties. There are no understandings or agreements relating to this Agreement which are not fully expressed in the Agreement and no change, waive, or discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the Party again whom such change, waiver, or discharge is sought to be enforced.

11. Miscellaneous

- (a) Regulatory References: A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as is effect or as amended.
- (b) Amendment: The Parties agree to take such action as is necessary to amend this Agreement from time to time as in necessary for COVERED ENTITY to comply with the requirements of the HIPAA Privacy rule and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- (c) Survival: The respective rights and obligations of BUSINESS ASSOCIATE under Section 5 of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation: Any ambiguity in this Agreement shall be resolved to permit COVERED ENTITY to comply with the Privacy Rule.

In Witness Whereof, BUSINESS ASSOCIATE and COVERED ENTITY have caused this Agreement to be signed and delivered by their dully authorized representatives, as of the date set forth above.

BUSINESS ASSOCIATE:

COVERED ENTITY:

signature

signature

