

NOTE: *This sample agreement is drafted to comply with the HIPAA rules as amended January 2013, and contains terms that are more favorable to covered entities. Business associates should consider adopting a different version that is more favorable to business associates. The agreement should be reviewed and modified to fit the user's circumstances and satisfy any additional state or federal laws that may apply to the user. Optional but recommended language appears in italics.*

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered between _____
("Covered Entity") and _____ ("Business Associate").

Background

Pursuant to the parties' separate services agreement ("Services Agreement"), Business Associate has agreed to perform certain services for or on behalf of Covered Entity that may involve the creation, maintenance, use, transmission or disclosure of protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and its implementing regulations, 45 CFR Parts 160 and 164 ("HIPAA Rules"). This Agreement supplements the Services Agreement and is intended to and shall be interpreted to satisfy the requirements for business associate agreements as set forth in the HIPAA Rules as they shall be amended. Business Associate understands and acknowledges that Business Associate is subject to the HIPAA Rules, and that the violation of the HIPAA Rules carry significant penalties as described in 45 CFR § 160.404.

Definitions

1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: *Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.*

2. **Specific Definitions.**

a. **Business Associate** shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean Business Associate.

b. **Covered Entity** shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean Covered Entity.

c. **Protected Health Information** shall generally have the same meaning as the term "protected health information" at 45 CFR § 160.103, and shall include any individually identifiable information that is created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity that relates to an individual's past, present, or future physical or mental health, health care, or payment for health care, whether such information is in oral, hard copy, electronic, or any other form or medium.



Agreement

- 1. Relationship of the Parties.** Business Associate is and at all times during this Agreement shall be acting as an independent contractor to Covered Entity, and not as Covered Entity's agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules. Business Associate shall not have authority to bind Covered Entity to any liability unless expressly authorized by Covered Entity in writing, and Covered Entity shall not be liable for the acts or omissions of Business Associate. Business Associate shall not represent itself as the agent of Covered Entity. Nothing in this Agreement shall be deemed to establish an agency, partnership, joint venture or other relationship except that of independently contracting entities.
- 2. Business Associate Responsibilities.** Business Associate agrees to:

 - a.** Fully comply with the HIPAA Rules as they apply to business associates.
 - b.** Not use or disclose protected health information except as permitted by this Agreement or as otherwise required by law.
 - c.** Use appropriate safeguards to prevent the use or disclosure of protected health information other than as permitted by this Agreement. Business Associate shall comply with the requirements in 45 CFR Part 164, Subpart C applicable to business associates, including the use of administrative, physical and technical safeguards to protect electronic protected health information.
 - d.** Immediately report to Covered Entity any use or disclosure of protected health information not permitted by this Agreement or the HIPAA Rules of which Business Associate becomes aware, including reporting breaches of unsecured protected health information as required by 45 CFR § 164.410, and reporting security incidents as required by 45 CFR § 164.314(a).
 - e.** Fully cooperate with Covered Entity's efforts to promptly investigate, mitigate, and notify third parties of breaches of unsecured protected health information or security incidents as required by the HIPAA Rules.
 - f.** Ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and requirements set forth in this Agreement and the HIPAA Rules applicable to such subcontractors. Business Associate may fulfill this requirement by executing a written agreement with the subcontractor incorporating the terms of this Agreement and otherwise complying with the requirements in 45 CFR §§ 164.308(b) and 164.502(e).
 - g.** Within ten (10) days following Covered Entity's request, make available to Covered Entity any protected health information in Business Associate's control as necessary to enable Covered Entity to satisfy its obligations to provide an individual with access to certain protected health information under 45 CFR § 164.524.

h. Within ten (10) days following Covered Entity's request, make available to Covered Entity any protected health information for amendment and incorporate any amendments to protected health information as necessary to enable Covered Entity to satisfy its obligations under 45 CFR § 164.526.

i. Maintain information concerning Business Associate's or subcontractors' disclosures of protected health information as required by 45 CFR § 164.528(a)-(b) and, within ten (10) days following Covered Entity's request, make such information available to Covered Entity as necessary to enable Covered Entity to render an accounting of disclosures pursuant to 45 CFR § 164.528. In addition to any other such information, Business Associate shall document the following as to any impermissible disclosure: (i) the date of the disclosure; (ii) the name and address of the person or entity to whom the disclosure was made; (iii) a brief description of the protected health information disclosed; and (iv) a brief statement of the purpose of the disclosure.

j. To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

k. Make Business Associate's internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.

3. Uses and Disclosures by Business Associate.

3.1 Permissible Uses and Disclosures. Business Associate may use or disclose protected health information only as follows:

- a.** As necessary to perform the services set forth in the Service Agreement.
- b.** To de-identify protected health information in accordance with 45 CFR § 164.514(a)-(c).
- c.** As required by law.
- d.** For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that any disclosures for these purposes (i) are required by law, or (ii)(a) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that 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)(b) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e.** To provide data aggregation services relating to the health care operations of Covered Entity as defined in 45 CFR § 164.501 if expressly allowed by Covered Entity.

3.2 Impermissible Uses or Disclosures. Business Associate may not use or disclose protected health information in a manner that would violate 45 CFR Part 164, Subpart E, if done by Covered Entity except for the specific uses and disclosures set forth in Sections 3.1(d)-(e), if applicable.

3.3 Minimum Necessary. Business Associate agrees to use, disclose, or request the minimum amount of protected health information necessary for a permitted purpose pursuant to this Section 3, Covered Entity's policies and procedures, and 45 CFR § 164.502(b).

4. Term and Termination. Unless otherwise agreed in writing by the parties, this Agreement shall be effective as of the date executed by the parties and shall continue until terminated as provided below.

4.1 Termination. This Agreement shall terminate on the date the Services Agreement is terminated for any reason. In addition, this Agreement may be terminated earlier as follows:

a. Covered Entity may terminate this Agreement without cause upon thirty (30) days prior written notice to Business Associate.

b. Covered Entity may terminate this Agreement upon ten (10) days prior notice if Covered Entity determines that Business Associate or any subcontractor has violated the HIPAA Rules, a material term of this Agreement, or otherwise engaged in conduct that may compromise the protected health information. Subject to Section 4.1(c), Business Associate shall have the opportunity to cure the breach or violation within the 10-day notice period. If Business Associate fails to cure the breach or violation within the 10-day notice period, Covered Entity may declare this Agreement terminated.

c. Notwithstanding Section 4.1(b), Covered Entity may terminate this Agreement immediately if Business Associate or any subcontractor engages in any conduct that Covered Entity reasonably believes may result in adverse action against Covered Entity by any governmental agency or third party.

4.2 Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall, with respect to protected health information received from Covered Entity, or created, maintained, used, or received by Business Associate on behalf of Covered Entity:

a. If feasible, return all protected health information to Covered Entity or, if Covered Entity agrees, destroy such protected health information.

b. If the return or destruction of protected health information is not feasible, continue to extend the protections of this Agreement and the HIPAA Rules to such information and not use or further disclose the information in a manner that is not permitted by this Agreement or the HIPAA Rules.

4.3 Survival. Business Associate's obligations under Section 4 shall survive termination of this Agreement.

4.4 Termination of Services Agreement. Notwithstanding anything in the Services Agreement to the contrary, Covered Entity shall have the right to terminate the Services Agreement

immediately if Business Associate's creation, maintenance, use, transmission or disclosure of protected health information is a material purpose of the Service Agreement and this Agreement is terminated for any reason.

5. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

6. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HIPAA Rules and any other applicable law.

7. Governing Law. This Agreement shall be construed to comply with the requirements of the HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of the State in which Covered Entity maintains its principal place of business.

8. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors and assigns. Business Associate may assign or subcontract rights or obligations under this Agreement to subcontractors or third parties without the express written consent of Covered Entity provided that Business Associate complies with Section 2(f), above. Covered Entity may assign its rights and obligations under this Agreement to any successor or affiliated entity.

9. Cooperation. The parties agree to cooperate with each other's efforts to comply with the requirements of the HIPAA Rules and other applicable laws; to assist each other in responding to and mitigating the effects of any breach of protected health information in violation of the HIPAA Rules or this Agreement; and to assist the other party in responding to any investigation, complaint, or action by any government agency or third party relating to the performance of this Agreement. In addition to any other cooperation reasonably requested by Covered Entity, Business Associate shall make its officers, members, employees, and agents available without charge for interview or testimony.

10. Relation to Services Agreement. This Agreement supplements the Services Agreement. The terms and conditions of the Services Agreement shall continue to apply to the extent not inconsistent with this Agreement. If there is a conflict between this Agreement and the Services Agreement, this Agreement shall control.

11. No Third Party Beneficiaries. Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.

12. Entire Agreement. This Agreement contains the entire agreement between the parties as it relates to the use or disclosure of protected health information, and supersedes all prior discussions, negotiations and services relating to the same to the extent such other prior communications are inconsistent with this Agreement.

[OPTIONAL: 13. Insurance. *Unless waived in writing by Covered Entity, Business Associate shall obtain and maintain insurance or equivalent programs of self-insurance with appropriate limits sufficient to cover costs, losses and damages that may arise from Business Associate's breach of this Agreement or*



any unauthorized use or disclosure of protected health information by Business Associate. Upon Covered Entity's request, Business Associate shall provide proof of such insurance to Covered Entity.]

[OPTIONAL: 14. Indemnification. *Business Associate agrees to defend, indemnify, and hold harmless Covered Entity and Covered Entity's officers, members, employees and agents from and against any and all claims, fines, penalties, liabilities, demands, damages, losses, costs and expenses (including costs and reasonable attorneys' fees) that are caused by or result from Business Associate's breach of this Agreement or any acts or omissions of Business Associate or Business Associate's officers, members, employees, agents, or subcontractors arising out of the use and disclosure protected health information or violation of the HIPAA Rules.*

COVERED ENTITY

By: _____
Print Name: _____
Print Title: _____
Date: _____

BUSINESS ASSOCIATE

By: _____
Print Name: _____
Print Title: _____
Date: _____