

HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT

DEFINITIONS

1. **Covered Entity.** Covered Entity shall mean _____
2. **Business Associate.** Business Associate shall mean _____
3. **Protected Health Information.** Protected Health Information (PHI) shall mean individually identifiable health information maintained or transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that relate to: (i) the past, present, or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present, or future payment for the provision of health care to an individual. PHI does not include health information that has been de-identified in accordance with the standards for de-identification provided for in the HIPAA Privacy Rule.
4. **Underlying Service Agreement.** Underlying Service Agreement shall mean the contract, agreement or arrangement in effect at that time which governs interaction between Covered Entity and Business Associate.
5. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms have in 45 CFR 160.103 and 164.501.

PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 45 CFR part 160 and part 164 subparts A and E, hereinafter referred to as the HIPAA Privacy Rule, the Covered Entity (as defined above) and Business Associate (as defined above) (jointly the Parties) wish to enter into an Agreement that addresses the requirements of the HIPAA Privacy Rule with respect to "business associates" as defined in the HIPAA Privacy Rule.

Specifically this Agreement is intended to ensure that Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) relating to Protected Health Information Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively Services) to be provided by Business Associate to Covered Entity. The Services to be provided by the Business Associate are identified in the Underlying Service Agreement between the Parties.

The Parties acknowledge and agree that in connection with the services to be provided, Business Associate will create, receive, use, or disclose Protected Health Information (PHI).

GENERAL TERMS

1. In the event of an inconsistency between the provision of this Agreement and the mandatory terms of the HIPAA Privacy Rule, as may be expressly amended from time to time by the Department of Health and Human Services (HHS) or as a result of interpretations by HHS, a court, or another regulatory agency with authority over the Parties, the interpretation of HHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.
2. Where provisions of this Agreement are different from those mandated by the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provision of this Agreement shall control.
3. Except as expressly provided in the HIPAA Privacy Rule or this Agreement, this Agreement does not create any rights in third parties.

4. The respective rights and obligations of Business Associate under the Term and Termination of Agreement Section shall survive the termination of this Agreement.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Privacy Obligations

1. Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Agreement or the HIPAA Privacy Rule and only in connection with providing the services to Covered Entity identified in the Underlying Service Agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for Treatment, Payment and Health Care Operations in accordance with the HIPAA Privacy Rule. Additionally, under the HIPAA Privacy Rule, Business Associate also may use or disclose PHI received by Business Associate in its capacity as a Business Associate to the Covered Entity if:
 - a. the use relates to: (i) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate; or (ii) data aggregation services relating to the health care operations of the Covered Entity; or
 - b. the disclosure of information received in such capacity will be made in connection with a function, responsibility, or service identified in a.(i), and such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.
2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
3. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement.
4. Business Associate agrees to include in all contracts with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, the same restrictions and conditions on the use and disclosure of PHI that apply through this Agreement to Business Associate with respect to such information.
5. Business Associate agrees to provide access, at the request of Covered Entity, and within a reasonable period of time and at a reasonable location, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an individual who is the subject of the PHI in order to meet the requirements under 45 CFR 164.524.
6. Business Associate agrees to make PHI available for amendment and to incorporate any amendment to PHI 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, within a reasonable time and in a reasonable manner.
7. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to HHS or its agents, within a reasonable time and in a reasonable manner, for the purpose of determining Covered Entity's compliance with the HIPAA Privacy Rule.

8. Business Associate agrees to document such disclosures of PHI and information related to such disclosure as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate agrees to provide to Covered Entity or an individual, within a reasonable time and in a reasonable manner, information collected to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

Security Obligations

1. Business Associate agrees to implement appropriate administrative, physical, technical service and technical security measures to protect the integrity, confidentiality and availability of any PHI that it may receive or maintain as a result of Business Associate's relationship to Covered Entity.
2. Business Associate agrees that all such security measures will be consistent with 45 CFR 164 subpart C (HIPAA Security Rule) and in compliance with the requirements of HIPAA Security Rule as of the effective date of the regulation.

Standards for Electronic Transactions Obligations

1. Business Associate agrees that if it (or an agent or subcontractor acting as directed by Business Associate) conducts an electronic transmission which HHS has defined as a "standard transaction", that such transaction will comply with the requirements of 45 CFR 160 and 162 (Standards for Electronic Transactions). Business Associate will attain compliance no later than the regulatory compliance date prescribed by HHS, which is now October 16, 2003.
2. Business Associate agrees that, if necessary, by October 16, 2002 it will have submitted a compliance plan to HHS as provided for in the 45 USC § 1305 (Administrative Simplification Compliance Act).
3. Business Associate agrees that, in connection with the transmission of standard transactions, it will not (and will not direct any business associate, agent, or subcontractor with which it contracts to):
 - a. change the definition, data condition, or use of a data element or segment in a standard transaction;
 - b. add any data elements or segments to the maximum defined data set;
 - c. use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification; or
 - d. change the meaning or intent of the standard's implementation specification(s).

OBLIGATIONS OF COVERED ENTITY

1. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
3. Covered Entity shall notify Business Associate of any restrictions to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522.
4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by Covered Entity.
5. Covered Entity shall amend its Plan Documents to include specific provisions to restrict the use or disclosure of PHI by the Covered Entity and to ensure adequate procedural safeguards and accounting mechanisms for such uses and disclosures in accordance with 45 CFR 164.54 and 45 CFR 164.530.

6. Covered Entity agrees, represents and warrants to Business Associate that it will:
 - a. obtain any consent or authorization that may be required by applicable federal or state law before furnishing Business Associate with PHI, except insofar as the PHI may be lawfully disclosed to Business Associate without consent or authorization; and
 - b. not furnish Business Associate any PHI that is subject to any arrangements permitted or required of Covered Entity that may adversely affect Business Associate's ability to use or disclose PHI under this Agreement or the Underlying Service Agreement, including, but not limited to, restrictions on the use or disclosure of PHI as provided for in 45 CFR 164.522.

TERM AND TERMINATION OF AGREEMENT

1. Term. The term of this agreement shall be effective as of 4/14/2003, and shall terminate when: (a) 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, (b) if it is infeasible to return or destroy PHI, protections are extended to such 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 have the right to terminate this Agreement or seek any other remedies available by law for a Covered Entity.
3. Termination of Underlying Service Agreement. Parties agree that the termination of the Underlying Service Agreement between Parties will result in the termination of this Agreement effective upon compliance with Section 1.(a) or (b) of this Term and Termination of Agreement provision.
4. Effect of Termination. Except as further provided in this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of the Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the day and year stated above.

Company Name: _____

Company Name: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____