

Sample HIPAA Business Associate Agreement Template

The Business Associate Agreement is entered into as of _____, by and between _____ with a mailing address of _____ [hereinafter referred to as the Covered Entity] and _____ with a mailing address of _____ [hereinafter referred to as the Business Associate], collectively referred to as the Parties, both of whom agree to be bound by this Agreement.

Background

- I. Covered Entity is either a “covered entity” or “business associate” of a Covered Entity as each are defined under the Health Insurance Portability and Accountability Act of 1986, Public Law 104-191, as amended by the HITECH ACT [as defined below] and the related regulations promulgated by HHS [as defined below] [collectively, “HIPAA”] and, as such, is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information [as defined below];
- II. The Parties have entered into or will enter into one or more agreements under which Business Associate provides or will provide certain specified services to Covered Entity [collectively, the “Agreement”];
- III. In providing services pursuant to the Agreement, Business Associate will have access to Protected Health Information;
- IV. By providing the services pursuant to the Agreement, Business Associate will become a “business associate” of the Covered Entity as such term is defined under HIPAA;
- V. Both Parties are committed to complying with all federal and state laws governing confidentiality and privacy of health information, including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR § 160 and § 164, Subparts A and E [collectively, the “Privacy Rule”]; and
- VI. Both Parties intend to protect the privacy and provide for the security of Protected Health Information disclosed to Business Associate pursuant to this Agreement, HIPAA and other applicable laws.

Agreement

Now, therefore, in consideration of the mutual covenants and conditions contained herein and the continued provision of PHI by Covered Entity to Business Associate under the Agreement in reliance on this Agreement, the Parties agree as follows:

1. 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, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

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, and comply with Subpart C of 45 CFR § 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- C. Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR § 164.410, and any security incident of which it becomes aware;
- D. In accordance with 45 CFR § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- E. Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's 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 the Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526;

- G. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528;
- H. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR § 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- I. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Use and disclosure of PHI

- A. Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI as reasonably necessary to provide the services described in the Agreement to Covered Entity, and to undertake other activities of Business Associate permitted or required of Business Associate by this Agreement or as required by law.
- B. Except as otherwise limited by this Agreement or federal or state law, Covered Entity authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate's business and to carry out its legal responsibilities. Business Associate may disclose PHI for its proper management and administration, provided that (i) the disclosures are required by law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from this third party that the PHI will be held confidential as provided under this Agreement and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party and (b) an agreement from this third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of the breach.
- C. Business Associate will not use or disclose PHI in a manner other than as provided in this Agreement, as permitted under the Privacy Rule, or as required by law. Business Associate will use or disclose PHI, to the extent practicable, as a limited data set or limited to the minimum necessary amount of PHI to carry out the intended purpose of the use or disclosure, in accordance with § 13405(b) of the HITECH Act (codified at 42 USC § 17935(b)) and any of the act's implementing regulations adopted by HHS, for each use or disclosure of PHI.
- D. Upon request, Business Associate will make available to Covered Entity any of Covered Entity's PHI that Business Associate or any of its agents or subcontractors have in their possession.
- E. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4. Safeguards against misuse of PHI

Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by this Agreement and Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate agrees to take reasonable steps, including providing adequate training to its employees to ensure compliance with this Agreement and to ensure that the actions or omissions of its employees or agents do not cause Business Associate to breach the terms of this Agreement.

5. Permitted uses and disclosures by Business Associate

- A. Business Associate may only use or disclose protected health information:
- B. Business Associate may use or disclose protected health information as required by law.
- C. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.
- D. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR § 164 if done by Covered Entity.

6. Provisions for Covered Entity to inform Business Associate of privacy practices and restrictions

- A. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

7. Permissible requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR § 164 if done by Covered Entity.

8. Term and Termination

- A. Term. The Term of this Agreement shall be effective as of _____, and shall terminate on _____ or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- B. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement.
- C. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI.
- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

9. Effect of Agreement

- A. This Agreement is a part of and subject to the terms of the Agreement, except that to the extent any terms of this Agreement conflict with any term of the Agreement, the terms of this Agreement will govern.
- B. Except as expressly stated in this Agreement or as provided by law, this Agreement will not create any rights in favor of any third party.

In light of the mutual agreement and understanding described above, the Parties execute this Agreement as of the date first written above.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____