

Business Associate Agreement

[Optional provisions are in brackets; additional provisions not inconsistent with the required provisions may be added. Underlined provisions have been added or changed to comply with the final HITECH Act Rule issued January 25, 2013, 78 Fed. Reg. p. 5566. Not for use without review by legal counsel.]

[This Business Associate Agreement is entered into by and between _____, a _____ (“Business Associate”) and _____, a _____ (“Covered Entity”), which is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The parties are entering into this agreement to assist the Covered Entity in complying with HIPAA, and to set forth Business Associate’s obligations under the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”), and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”). Terms used in this Agreement have the meanings given them in the HIPAA Regulations. This agreement applies to any Protected Health Information Business Associate receives from Covered Entity, or creates, receives or maintains on behalf of Covered Entity, under its agreements with Covered Entity (the “Principal Agreements”).]

AGREEMENT

1. Business Associate may use and disclose Covered Entity’s Protected Health Information to provide Covered Entity with the goods and services contemplated by the Principal Agreements. Except as expressly provided below, this agreement does not authorize Business Associate make any use or disclosure of Protected Health Information that Covered Entity would not be permitted to make.
2. Business Associate will:
 - (a) Not use or further disclose Covered Entity’s Protected Health Information except as permitted by the Principal Agreements [or this Agreement], or as required by law;
 - (b) Use appropriate safeguards, and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information, to prevent use or disclosure of Covered Entity’s Protected Health Information other than as provided for by the Principal Agreements [or this Agreement];
 - (c) Report to Covered Entity [within ___ days of discovery] any use or disclosure of Covered Entity’s Protected Health Information not provided for by the Principal Agreements [or this Agreement] of which it becomes aware, including breaches of unsecured protected health information as required by the Data Breach Notification Rule (45 CFR § 164.410), and any security incident of which Business Associate becomes aware.
 - (d) [Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of this Agreement or the HIPAA Regulations;]
 - (e) Ensure that any of Business Associate’s subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such information, including compliance with the HIPAA Security Rule with respect to electronic protected health information;
 - (f) Make any Protected Health Information in a designated record set available to Covered Entity to enable Covered Entity to meet its obligation to provide access to the information in accordance with 45 CFR § 164.524;
 - (g) Make any Protected Health Information in a designated record set available for amendment and incorporate any amendments to Protected Health Information as directed by Covered Entity pursuant to 45 CFR § 164.526;
 - (h) Make available to Covered Entity the information concerning disclosures that Business Associate makes of Covered Entity’s Protected Health Information required to enable Covered Entity to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(i) To the extent that Business Associate carries out Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(j) Make Business Associate's internal practices, books, and records relating to Business Associate's use and disclosure of Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with the HIPAA Regulations[, and to the Covered Entity for purposes of determining Business Associate's compliance with this Agreement];

(k) [Limit its requests for and uses and disclosures of Covered Entity's Protected Health Information to the minimum necessary, and comply with any minimum necessary policies and procedures that covered entity provides to Business Associate];

(l) Upon termination of the Principal Agreements, return or destroy all Covered Entity's Protected Health Information that Business Associate still maintains in any form and retain no copies of such information or, if return or destruction is not feasible, extend the protections of this agreement to that information and limit further use and disclosure to those purposes that make the return or destruction of the information infeasible.

3. [Business Associate may use Covered Entity's Protected Health Information for the management and administration of Business Associate's company and to carry out Business Associate's own legal responsibilities, and Business Associate may disclose the information for these purposes if Business Associate is required to do so by law, or if Business Associate obtains reasonable assurances from the recipient of the information (1) that it will be held confidentially, and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (2) that the recipient will notify Business Associate of any instances of which the recipient is aware in which the confidentiality of the information is breached.]

4. [Business Associate may use Covered Entity's Protected Health Information for data aggregation, as permitted by the Privacy Rule.]

5. [Business Associate may de-identify Covered Entity's Protected Health Information, and use and disclosed the de-identified information without restriction.]

6. If Covered Entity determines that Business Associate has violated a material term of this agreement, [and if Business Associate fails to cure such violation within __ days of delivery of written notice thereof,] Covered Entity may immediately terminate the Principal Agreements. [This Agreement shall remain in effect as long as Business Associate maintains or has access to Covered Entity's Protected Health Information, regardless of the termination of the Principal Agreements.]

7. [This agreement is to be interpreted in accordance with HIPAA, the HITECH Act, and the regulations promulgated thereunder, as amended from time to time.]

Business Associate:

Covered Entity:

Name

Name

Signature

Signature

Name and title

Name and title

Date

Date