**Business Associate Agreement**

This Business Associate Agreement ("Agreement"), effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("Effective Date"), is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Business Associate") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the "Covered Entity").

Citations to the code of the Federal Regulations shall be read to include and require all subsequent, updated, amended or revised provisions.

**Definitions**

Catch-all definition:

    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.

Specific definitions:

(a) Business Associate.  “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 [Insert Name of Business Associate].

(b) Covered Entity.  “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 [Insert Name of Covered Entity].

(c) HIPAA Rules.  “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**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 Part 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;

 Check all that apply:

 ( ) Business Associate will notify Covered Entity of breach within [Insert Specified Time Frame].

( ) Business Associate will notify patient of breach

( ) Business Associate will notify HHS Office for Civil Rights of breach

( ) Business Associate will notify media of breach

(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 [Choose either “covered entity” or “individual or the individual’s designee”] as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;

 Check all that apply:

( ) Business Associate will forward request for access of the designated record set to Covered Entity within [Insert Specified Time Frame].

( ) Business associate will respond to request for access of the designated record set within [Insert Specified Time Frame]. If Business Associate is unable to respond to request for access, the Business Associate will notify the requesting party.

(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;

 Check all that apply:

( ) Business Associate will not make amendment(s) to protected health information in a designated record set. Business Associate will forward all amendment requests to Covered Entity within [Insert Specified Time Frame].

( ) Business Associate will make amendment(s) to protected health information in a designated record set within [Insert Specified Time Frame].

 (g) Maintain and make available the information required to provide an accounting of disclosures to the [Choose either “covered entity” or “individual”] as necessary to satisfy covered entity’s obligations under 45 CFR 164.528;

 Check all that apply:

( ) Business Associate will not provide accounting of disclosures. Business Associate will forward request for accounting of disclosures to Covered Entity within [Insert Specified Time Frame].

 ( ) Business Associate will respond to request for accounting of disclosures within [Insert Specified Time Frame].

(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 Part 164, to 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.

 **Permitted Uses and Disclosures by Business Associate**

1. Business Associate may only use or disclose protected health information in way(s) listed.

Check all that apply:

( ) [Provide a specific list of permissible purposes.]

( ) Business Associate may use or disclose protected health information as necessary to perform the services set forth in Service Agreement.

( ) Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).  [Specify the manner in which the business associate will de-identify the information and the permitted uses and disclosures by the business associate of the de-identified 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

 Check all that apply:

 ( ) consistent with covered entity’s minimum necessary policies and procedures.

( ) subject to the following minimum necessary requirements: [Include specific minimum necessary provisions that are consistent with the 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 Part 164 if done by covered entity. If the Agreement permits the Business Associate to use or disclose protected health information for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions.

Check all that apply:

( ) 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.

( ) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or 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 the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

( ) Business Associate may provide data aggregation services relating to the health care operations of the covered entity.

**Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

Check all that apply:

( ) 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 protected health information.

( ) 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 protected health information, to the extent that such changes may affect Business Associate’s use or disclosure of protected health information.

( ) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information 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 protected health information.

**Permissible Requests by Covered Entity**

Covered entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity. Exceptions if certain provisions are made.

Check all that apply:

( ) Data aggregation

( ) Management and administration

( ) Legal responsibilities of the Business Associate

**Term and Termination**

(a) Term. The Term of this Agreement shall be effective as of [Insert effective date], and shall terminate on [Insert termination date or event] 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. Some conditions may be made.

Check all that apply:

( ) and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity. [Insert Specified Time Period].

1. Obligations of Business Associate Upon Termination.

Check all that apply:

( ) Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity all protected health information 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 protected health information.

( ) Upon termination of this Agreement for any reason, Business Associate shall destroy all protected health information 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 protected health information.

( ) Business Associate will obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.

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

* 1. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
	2. Return to Covered Entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the Business Associate still maintains in any form;
	3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
	4. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at which applied prior to termination; and
	5. Return to Covered Entity [or, if agreed to by covered entity, destroy] the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

( ) Upon termination of this Agreement for any reason, Business Associate will transmit the protected health information to another Business Associate of the Covered Entity at termination.

(d) Survival.  The obligations of Business Associate under this Section shall survive the termination of this Agreement.

**Miscellaneous**

 Check all that apply:

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

( ) The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

( ) Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

**Notices**

|  |  |
| --- | --- |
| If to Covered Entity, send notice to: | If to Business Associate, to: |
| [Insert Name of Covered Entity] | [Insert Name of Business Associate] |
| Attn: Privacy Officer | Attn: |
|  |
| [Insert Address] | [Insert Address] |
|  |  |
| Facsimile number: [Insert Fax number] | Facsimile number: [Insert Fax number] |

**No Third Party Beneficiaries.**

Business Associate and Covered Entity do not intend, nor does anything expressed or implied in this Agreement intend to confer, upon any person other than Business Associate and Covered Entity, and their respective successor or assigns, any rights, remedies, obligations or liabilities whatsoever.

**Independent Contractor.** The Business Associate is performing services pursuant to the Agreement and for all purposes hereunder, Business Associate’s status shall be that of an independent contractor.

APPROVED AND ACCEPTED BY:

Business Associate Date

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Covered Entity Date

Title: \_\_\_\_\_\_