**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into as of [DATE] (“Effective Date”) by and between COMPANY NAME, a [ORGANIZATION TYPLE] organized under the laws of [STATE] (“Covered Entity”) and COUNTERPARTY NAME, a [ORGANIZATION TYPLE] organized under the laws of [STATE] (“Business Associate,” in accordance with the meaning given to those terms at 4 CFR §164.501). In this BAA, Covered Entity and Business Associate are each a “Party” and, collectively, the “Parties.”

WHEREAS, Covered Entity is a “covered entity” under HIPAA and is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information; and

WHEREAS, the Parties have entered into an agreement dated [AGREEMENT DATE] (“Agreement”) for Business Associate to provide certain specified services to Covered Entity involving the access or use of Protected Health Information; and

WHEREAS, by providing the services pursuant to the Agreement, Business Associate will become a “business associate” of Covered Entity under HIPAA; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and the continued provision of Protected Health Information by Covered Entity to Business Associate under the Agreement in reliance on this BAA, the Parties agree as follows:

1. Definitions
   1. *General*. For purposes of this BAA, any capitalized term used but not otherwise defined has the meaning given to that term in the HIPAA Rules or pertinent law.
   2. Specific Definitions.
      1. “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 BAA, shall mean COUNTERPARTY NAME.
      2. “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 BAA, shall mean COMPANY NAME.
      3. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the HITECH Act and the related regulations promulgated by the U.S. Department of Health and Human Services.
      4. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
      5. “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
      6. “Protected Health Information” or “PHI” has the meaning given to the term “protected health information” in 45 CFR 164.501 and 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
2. Obligations and Activities of Business Associate
   1. Business Associate shall not use or disclose PHI other than as permitted or required by the Agreement or as required by law;
   2. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
   3. Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
      1. [OPTIONAL: If desired, add additional specificity regarding the breach notification obligations of Business Associate, such as a stricter timeframe for Business Associate to report a potential breach to Covered Entity and/or whether Business Associate will handle breach notifications to individuals, the HHS Office for Civil Rights, and potentially the media, on behalf of Covered Entity.]
   4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI;
   5. Business Associate shall make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;
      1. [OPTIONAL: If desired, add additional specificity regarding how Business Associate will respond to a request for access that Business Associate receives directly from the individual (such as whether and in what time and manner a Business Associate is to provide the requested access or whether Business Associate will forward the individual’s request to Covered Entity to fulfill) and the timeframe for Business Associate to provide the information to Covered Entity.]
   6. Business Associate shall make any amendments to PHI in a designated record set as directed or agreed to by 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;
      1. [OPTIONAL: If desired, add additional specificity regarding how Business Associate will respond to a request for amendment that Business Associate receives directly from the individual (such as whether and in what time and manner a Business Associate is to act on the request for amendment or whether Business Associate will forward the individual’s request to Covered Entity) and the timeframe for Business Associate to incorporate any amendments to the information in the designated record set.]
   7. Business Associate shall 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;
      1. [OPTIONAL: If desired, add additional specificity regarding how Business Associate will respond to a request for an accounting of disclosures that Business Associate receives directly from the individual (such as whether and in what time and manner Business Associate is to provide the accounting of disclosures to the individual or whether Business Associate will forward the request to Covered Entity) and the timeframe for Business Associate to provide information to Covered Entity.]
   8. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations; and
   9. Business Associate shall make its internal practices, books, and records available to the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with the HIPAA Rules.
3. Permitted Uses and Disclosures by Business Associate
   1. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Agreement.
   2. Business Associate may use or disclose PHI as required by law.
   3. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s Minimum Necessary policies and procedures.
   4. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in section 3.5 below.
   5. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of 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.
4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions
   1. OPTIONAL: Covered Entity shall notify Business Associate of any limitation 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.
   2. OPTIONAL: Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose their PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.
   3. OPTIONAL: 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.
5. Permissible Requests by Covered Entity
   1. OPTIONAL: 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 Part 164 if done by Covered Entity.
6. Term and Termination
   1. *Term*. This BAA shall be effective as of the Effective Date and shall terminate on [DATE/EVENT] or on the date Covered Entity terminates for cause as authorized by this BAA, whichever is sooner.
   2. *Termination for Cause*. Covered Entity may immediately terminate this BAA if Covered Entity determines that Business Associate has violated a material term of this BAA and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.
   3. *Obligations of Business Associate Upon Termination*. Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
      1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
      2. Destroy or return to Covered Entity, as directed by Covered Entity, the remaining PHI that 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 PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
      4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions under this BAA which applied prior to termination;
      5. Destroy or return to Covered Entity, as directed by Covered Entity, the PHI 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; and
      6. If applicable, ensure that any permitted subcontractors comply with all Business Associate’s obligations contained in this section 6.
   4. *Survival*. The obligations of Business Associate under this section 6 shall survive the termination of this BAA.
7. Miscellaneous
   1. *Data Ownership*. Business Associate’s data stewardship does not confer data ownership rights on Business Associate with respect to any data shared with it under the Agreement, including any and all forms thereof.
   2. *Continued Compliance*. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules, HITECH Act, and any other applicable law.
   3. *Regulatory References*. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
   4. *Notices*. All notices, requests and demands or other communications to be given under this BAA to a Party will be made via either first class mail, registered or certified or express courier, or electronic mail to the Party’s address given below:
      1. If to Covered Entity, to: COMPANY ADDRESS
      2. If to Business Associate, to: COUNTERPARTY ADDRESS
   5. Effect of BAA.
      1. This BAA is a part of and subject to the terms of the Agreement, except that, to the extent any terms of this BAA conflict with any terms of the Agreement, the terms of this BAA shall govern.
      2. Except as expressly stated in this BAA or as provided by law, this BAA will not create any rights in favor of any third party.
      3. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
   6. *Amendment and Waiver*. This BAA may not be modified, nor will any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.
   7. *Headings and Captions*. Headings and captions used in this BAA are for reference purposes only and will not have any effect on the interpretation of this BAA.
   8. *Signatures*. This BAA may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all of which together shall constitute one instrument. This BAA may be executed by electronic signatures, which shall have the same force and effect as original signatures.
   9. *Governing Law*. This BAA shall be governed by and construed in accordance with the laws of [STATE], without regard to its choice of law provisions. The jurisdiction and venue shall be exclusively in the courts of [STATE/DISTRICT].

In light of the mutual agreement and understanding described above, the Parties execute this BAA on the dates set forth below.

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| Accepted by Covered Entity:  COMPANY NAME  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature / Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name / Title | Accepted by Business Associate:  COUNTERPARTY NAME  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature / Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name / Title |