



BUSINESS ASSOCIATE AGREEMENT

A. DEFINITIONS

Terms used, but not otherwise defined, in this Business Associate Agreement (“BAA”) shall have the same meaning as those terms in 45 Code of Federal Regulations (“CFR”) §§ 160.103, 164.402, and 164.501.

- A1. **HIPAA.** The Health Insurance Portability and Accountability Act of 1996, and all of the implementing regulations of that statute, including Parts 160 and 164 of Title 45 of the CFR, as amended from time to time.
- A2. **Individual.** The same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- A3. **Privacy Rule.** The Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- A4. **Security Rule.** The Standards for Security of Individually Identifiable Health Information at 45 CFR parts 160 and 162 and part 164, subparts A and C.
- A5. **Information.** The same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Contractor from or on behalf of Facility.
- A6. **Required By Law.** The same meaning as the term “required by law” in 45 CFR § 164.103.
- A7. **Breach.** The same meaning as the term “breach” in 45 CFR § 164.402.
- A8. **Unsecured Information.** The same meaning as the term “unsecured protected health information” in 45 CFR § 164.402.
- A9. **HHS.** The Department of Health and Human Services or its designee.
- A10. **Disclose.** The release, transfer or provision of access to Information, whether oral or recorded in any form or medium.
- A11. **Use.** The sharing, employment, application, utilization, examination, or analysis, in any form or medium, of Information within the Contractor organization.

B. RESPONSIBILITIES OF BUSINESS ASSOCIATE

- B1. **Permitted Uses and Disclosures.** Contractor agrees not to use or disclose Information other than as permitted or required by the Agreement or as required by law. Except as otherwise limited in this BAA, Contractor may:
 - a. Use or disclose Information to perform functions, activities, or services for, or on behalf of, Facility as specified in any service agreement currently in place, or negotiated in the future between the parties, that involves the use or disclosure of Information between Facility and Contractor, provided that such use or disclosure does not violate the Privacy Rule.
 - b. Use Information for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor.
 - c. Contractor may disclose Information as necessary for the proper management and administration of Contractor, and to carry out its legal responsibilities, if: (a) the disclosure is required by law; or (b) Contractor obtains reasonable assurances from the person to whom Information is disclosed 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 person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of Unsecured Information has been potentially Breached.
 - d. Use Information to provide Data Aggregation services to Facility as permitted by HIPAA.
- B2. **Relationship to Individuals.**
 - a. Contractor agrees that Facility and the Individual retain all ownership rights to the Information, and that Contractor does not obtain any right, title or interest to the Information furnished by Facility.
 - b. Contractor agrees to comply with all lawful requests of Individuals to permit access to inspect and obtain a copy their Information about the Individual that is subject to this BAA, as required by law, within thirty (30) days of such request.

- c. Contractor agrees that, within fifteen (15) days of a request being made, it will provide Facility with any Information requested by Facility.
- d. Contractor agrees to make Information available for amendment and to immediately incorporate any amendments or corrections to an Individual's Information upon request by Facility in accordance with applicable law.
- B3. Use/Disclosure in Accordance with Law.** Contractor understands that both Facility and Contractor are subject to state and federal laws governing the confidentiality of the Information. Contractor agrees to abide by all such laws, whether or not fully articulated herein, and to keep the Information in the manner and subject to the standards required by the Privacy Rule and any other applicable state and federal laws. To the extent that Contractor is to carry out Facility's obligations under the Privacy Rule, Contractor agrees to comply with the requirements applicable to the obligation.
- B4. Safeguarding Information.** Contractor agrees to abide by the Security Rule, to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of Information that it receives from Facility, and to prevent individuals not involved in performing the services that it provides to Facility from using or accessing the Information.
- B5. Mitigating Harmful Effects.** Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Information by Contractor in violation of the requirements of this BAA. Contractor shall exercise reasonable diligence to discover any Breach of Information.
- Contractor agrees that if Facility determines or has a reasonable belief that Contractor may have used, made a disclosure of or permitted access to Information in a way that is not authorized by this BAA, then Facility may in its sole discretion require Contractor to: (a) promptly investigate and provide a written report to Facility of the Contractor's determination regarding any alleged or actual unauthorized disclosure, access, or use; (b) cease such practices immediately; (c) return to Facility, or destroy, all Information; and (d) take any other action Facility deems appropriate.
- B6. Reporting of Violations.** Contractor agrees that it will immediately report to Facility any use or disclosure of Information received from Facility that is not authorized by or otherwise constitutes a violation of the BAA.
- In the event of a potential Breach of Unsecured Information, Contractor agrees that it will immediately report the potential Breach to Facility, and in no event will it fail to report the potential Breach within three (3) days of its discovery by Contractor. Contractor shall include in its report to Facility the following: (a) the identification of each individual whose Information may have been accessed, acquired, used, or disclosed during the Breach; (b) a brief description of what happened, including the date of the Breach and the date of discovery of the Breach; (c) a description of the types of Information that were involved in the Breach; (d) steps Individuals may take to protect themselves from potential harm resulting from the Breach; and (e) a description of what the Contractor is doing to investigate the Breach, mitigate harm to Individuals, and protect against further Breaches. In the event this information is not immediately available, Contractor shall provide the information to Facility as soon as it is discovered. Contractor shall assist Facility as requested to provide notification to affected Individuals, and, if requested by Facility, Contractor agrees to provide a toll-free number, e-mail address, website, or postal address for Individuals to ask questions or learn additional information about the Breach.
- B7. Agents and Subcontractors.** If it becomes necessary for Contractor to share Information that has been disclosed to it by Facility with any person or any entity who is not an employee of Contractor, then Contractor agrees to cause such person or entity to enter into a written agreement in which the person or entity agrees to abide by all of the terms to which Contractor is subject under the BAA with respect to the Information.
- B8. Accounting of Disclosures.**
- a. Contractor agrees to document disclosures of Information and the details of such disclosures as would be required for Facility to respond to a request by an Individual for an accounting of disclosures of Information in accordance with HIPAA.
- b. Within ten (10) days of notice by Facility of a request for an accounting of disclosures of Information, Contractor shall make available to Facility the information required to provide an accounting of disclosures to enable Facility to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. Except in the case of a direct request from an Individual for an accounting related to treatment, payment, or operations disclosures through an electronic health record, if the request for an accounting is delivered directly to Contractor or its agents or subcontractors, Contractor shall, within five (5) business days of a request, notify Facility about such request. Facility may either request that Contractor provide such information directly to the Individual, or it may request that the information be immediately forwarded to Facility for compilation and distribution to such Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment, or operations disclosures through electronic health records, Contractor shall provide such accounting to the Individual in accordance with and effective on the applicable date set forth in section 13405(c) of the Health Information Technology for Economic and Clinical Health Act. Notwithstanding anything in the Agreement to the contrary, Contractor and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this section for a period of six (6) years after termination of the Agreement.

- B9. **Minimum Necessary.** Contractor represents and warrants that if it uses or discloses Information or an element of Information, as permitted under this BAA, it will do so only in the minimum amount and to the minimum number of individuals necessary to achieve the purpose of the services being rendered to or on behalf of Facility. Contractor agrees that it will use all reasonable efforts to limit its request for Information to the minimum amount of Information necessary to achieve the purpose for which the request is being made. Contractor agrees to follow any guidance issued by HHS regarding the minimum necessary standard.
- B10. **Availability of Information.** Contractor shall make any and all internal practices, books, records and Information related to this BAA available to Facility for inspection and/or audit upon request by Facility, including, but not limited to, providing Facility access to Contractor's facilities for a review and demonstration of its internal practices and procedures for safeguarding Information. In addition, Contractor agrees to make its internal practices, books and records relating to the use and disclosure of Information available to HHS for review, upon the request of that Department.

C. RESPONSIBILITIES OF FACILITY

- C1. **Disclosure of Information.** Facility agrees to disclose Information to Contractor upon its own volition, upon Contractor's request, or upon the request of a third party if such disclosure is permissible by law, so that Contractor may provide the agreed to services to or on behalf of Facility, unless Facility otherwise objects to the disclosure, or Contractor is no longer providing the services to Facility. Facility shall not request Contractor to use or disclose Information in any manner that would not be permissible under the Privacy Rule if done by Facility.
- C2. **Notification of Changes and Restrictions.**
- a. Facility shall provide Contractor with any changes in, or revocation of, permission by an Individual to use or disclose Information, if such changes affect Contractor's permitted or required uses and disclosures.
 - b. Facility shall notify Contractor of any restriction to the use or disclosure of Information to which Facility has agreed in accordance with HIPAA.
- C3. **Notice of Privacy Practices.** Upon request, Facility will provide Contractor with a copy of its notice of privacy practices or direct Contractor to a source where it can be accessed. Facility may notify Contractor of limitation(s) in the notice of privacy practices of Facility under 45 CFR § 164.520, to the extent that such limitation may affect Contractor's use or disclosure of Information.

D. TERM & TERMINATION

- D1. **Term.** The term of this BAA shall be effective as of the Commencement Date of the Agreement, and shall terminate when all of the Information provided by Facility to Contractor, or created or received by Contractor on behalf of Facility, is destroyed or returned to Facility, or, if it is infeasible to return or destroy Information, protections are extended to such Information, in accordance with the termination provisions in this Section D.
- D2. **Termination for Cause.** Upon Facility's knowledge of a material breach by Contractor of a requirement in this BAA, Facility shall provide an opportunity for Contractor to cure the breach or end the violation. Facility shall terminate the Agreement if Contractor does not cure the breach, or end the violation, within the time specified by Facility. Facility may immediately terminate the Agreement if Contractor has breached a material term of the BAA, and cure is not possible. If neither termination nor cure is feasible, Facility shall report the violation to HHS.
- D3. **Effect of Termination.** Contractor agrees that upon termination of the Agreement, Contractor shall contact Facility with regard to any Information currently in its possession that was received from or created on behalf of Facility, and determine whether Facility wishes to have the Information returned to it or destroyed. If feasible, Contractor agrees to proceed in accordance with the Facility's instruction to return or destroy Information within thirty (30) days of receiving such instruction. If Facility elects to have the Information destroyed, Contractor agrees to destroy the Information in a manner specified by HHS as a means of securing Information in guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS website and by a method acceptable to Facility.

If Contractor believes that returning or destroying the Information is not feasible on account of a regulatory duty imposed on Contractor by law, or other valid reason, then Contractor shall provide to Facility notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of Information is not feasible, Contractor agrees that the protections afforded to such Information by this BAA will extend indefinitely beyond the term of the Agreement and that Contractor will limit further uses and disclosures to those purposes that make the return or destruction of the Information infeasible. Contractor agrees that its obligations with regard to notifying Facility of any potential Breach will also extend indefinitely beyond the term of this BAA. Contractor further agrees that no Information, copies of Information, or parts thereof, shall be retained when the aforementioned Information are returned or destroyed.