

020102 Draft

Business Associate Form. The following language is designed for insertion into an Agreement between a Covered Entity and a Business Associate. It is intended to meet the requirements of a Business Associate Agreement found in 45 CFR §164.504 and a Chain of Trust Partner Agreement described in 42 CFR §142.308.

____. BUSINESS ASSOCIATE

____.1. Use of Protected Health Information. _____ (referred to in this Section as the “Business Associate”) shall not use and shall ensure that its directors, officer, employees, contractors and agents do not use Protected Health Information (referred to in this Section as “PHI”) received from _____ (referred to in this Section as the “Covered Entity”) in any manner that would constitute a violation of the HIPAA Privacy Regulations or the HIPAA Security Regulations (referred to in this Section as “HIPAA”) if used by the Covered Entity. Covered Entity and the Business Associate agree that the Business Associate may use PHI (a) in the performance of its obligations under this Agreement, (b) for the Business Associate’s proper management and administrative services; or (c) to carry out the legal responsibilities of the Business Associate. Except for such use, the Business Associate agrees to hold all PHI strictly confidential.

____.2. Disclosure of PHI. The Business Associate shall not and shall ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from the Covered Entity in any manner that would constitute a violation of HIPAA if disclosed by the Covered Entity, except that the Business Associate may disclose PHI in a manner permitted pursuant to this Agreement or as required by law. To the extent The Business Associate discloses PHI to a third party, the Business Associate must obtain, prior to making any such disclosure: (a) written approval from the Covered Entity for such disclosure; (b) reasonable assurances from the third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (c) an agreement from such third party to immediately notify the Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

____.3. Safeguards Against Misuse of Information. The Business Associate agrees that it will implement all appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement.

____.4. Reporting of Disclosures of PHI. The Business Associate shall, within five (5) days of becoming aware of a disclosure of PHI in violation of this Agreement by the Business Associate, its officers, directors, employees, contractors or agents or by a third party to which the Business Associate disclosed PHI pursuant to this Section, report any such disclosure to the Covered Entity.

___.5. Agreements by Third Parties. The Business Associate shall enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by, the Business Associate on behalf of the Covered Entity pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Business Associate pursuant to this Agreement with respect to such PHI.

___.6. Access to Information. Within five (5) days of a request by the Covered Entity for access to PHI about an individual, the Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained. In the event any individual requests access to PHI directly from the Business Associate, the Business Associate shall within two (2) days forward such request to the Covered Entity. Any denials of access to the PHI requested shall be the responsibility of the Covered Entity.

___.7. Availability of PHI for Amendment. Within ten (10) days of receipt of a request from the Covered Entity for the amendment of an individual's PHI, the Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR §164.526.

___.8. Accounting for Disclosures. Within then (10) days of notice by the Covered Entity to the Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, the Business Associate shall make available to the Covered Entity such information as is in the Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 CFR §164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Covered Entity shall, within two (2) days, forward such request to the Covered Entity. It shall be the Covered Entities responsibility to prepare and deliver any such accounting requested. The Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

___.9. Availability of Books and Records. The Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity available to the Covered Entity and to the Secretary for purposes of determining the Covered Entities and The Business Associate's compliance with HIPAA.

___.10. Definitions. The terms used in this Section shall be defined as they are defined in HIPAA, 45 CFR §§160 and 164.

___.11. Amendment. Upon the enactment of any law or regulation affecting the use and/or disclosure of PHI, or the publication of any court decision relating to any such law, or the publication of any interpretive policy, opinion or guidance of any governmental agency charged with the enforcement of any such law or regulation, the Covered Entity may, by written notice to the Business Associate, amend this Section to comply with such law or regulation by providing 30 days' written notice to the Business Associate. Such amendment shall be binding upon the Covered Entity and the Business Associate at the end of the 30-day period and shall not require the consent of the Business Associate unless (i) the Business Associate provides the Covered Entity with notice of objection within the 30-day period, (ii) the change has a material adverse economic effect upon the Business Associate as reasonably determined by the Business Associate and (iv) the Business Associate delivers written notice to the Covered Entity during such 30-day period terminating this Agreement at the earliest time permitted by the other provisions of this Agreement. If the other provisions of this Agreement do not permit termination without cause, the Business Associate may terminate this Agreement within 30 days following delivery to the Covered Entity of notice that is permitted by the preceding sentence.

___.12. Breach. Without limiting the rights of the parties pursuant to other provisions of this Agreement, if the Business Associate breaches its obligations under this Section, the Covered Entity may, at its option: (a) exercise any of its rights of access and inspection under this Section; (b) require the Business Associate to submit to a plan of monitoring and reporting, as the Covered Entity may determine necessary to maintain compliance with this Section and such plan shall be made part of this Agreement; or (c) terminate this Agreement, with or without opportunity to cure the breach. The Covered Entities remedies under this Section and as specified elsewhere in this Agreement shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

___.13. Procedure Upon Termination. Upon termination of this Agreement, the Business Associate shall return or destroy all PHI that it maintains in any form and shall retain no copies of such information or, if the parties agree that return or destruction is not feasible, the Business Associate shall continue to extend the protections of this Section to such information and limit further use of the information to those purposes that make the return or destruction of the information not feasible. The provisions of this Section shall survive termination of the Agreement.

Alternative to Subsection ___.1 that permits use of the PHI for data aggregation purposes:

___.1. Use of Protected Health Information. _____ (referred to in this Section as the "Business Associate") shall not use and shall ensure that its directors, officer, employees, contractors and agents do not use Protected Health Information (referred to in this Section as "PHI") received from _____ (referred to in this Section as the "Covered Entity") in any manner that would constitute a violation of the HIPAA Privacy Regulations or the HIPAA Security Regulations (referred to in this Section as "HIPAA") if used by the Covered Entity. Covered Entity and the Business Associate agree that the Business Associate may use PHI (a) in the performance of its obligations under this Agreement, (b) for the Business Associate's proper management and administrative services; (c) to carry out the legal responsibilities of the Business Associate or (d) to provide data aggregation services, as defined in 45 CFR § 164.501, relating to the health care operations of the Covered Entity. Except for such use, the Business Associate agrees to hold all PHI strictly confidential.