

Sample Business Associate Agreement

(4. Other Bus. Assoc., Version 6-06-05)

This Business Associate Agreement (the "Agreement") is entered into as of _____, 200_, (the "Effective Date") by and between _____, (the "Covered Entity") and _____, (the "Business Associate"), (collectively, the "Parties").

WHEREAS, *[Insert Name of Site]* _____ is a "Covered Entity" as that term is defined in the Health Insurance Portability and Accountability Act, Privacy Standards, 45 C.F.R. Parts 160, 164 (the "Privacy Standards");

WHEREAS, *[Insert Name of Business Associate]* _____ is a "Business Associate" as that term is defined in the Privacy Standards, and will have access to Protected Health Information ("PHI") from the Covered Entity;

WHEREAS, pursuant to the Privacy Standards, the Business Associate must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

WHEREAS, the Parties wish to enter into this Agreement to comply with the requirements of the Privacy Standards.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in the Privacy Standards.

1.2 All PHI that is created or received by the Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

ARTICLE II PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

2.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity (*check applicable provision*):

For the following specific purposes: _____

As specified in the following agreement between Business Associate and Covered Entity:

2.2 Except as otherwise limited in this Agreement, Business Associate may also use PHI as follows (check any or all that apply):

- For the proper management and administration of Business Associate
- To carry out the legal responsibilities of Business Associate
- To provide data aggregation services to Covered Entity

2.3 Business Associate may not use or disclose PHI if such use or disclosure would be a violation of the Privacy Standards if done by Covered Entity.

2.4 Any use or disclosure of PHI by Business Associate must comply with the minimum necessary policies and procedures of the Covered Entity.

2.5 If Business Associate and Covered Entity are also a party to any other agreement, any use or disclosure of PHI by Business Associate must be consistent with such agreement. In the event of any inconsistency between the provisions of the Agreement and the provisions of any other agreement between the parties, the terms of this Agreement shall govern.

2.6 Business Associate agrees it will not use or further disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate may not use or disclose PHI if such use or disclosure would be a violation of other applicable law.

ARTICLE III RESPONSIBILITIES OF BUSINESS ASSOCIATE

3.1 Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement.

3.2 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.3 Reporting. Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

3.4 Subcontractors. In the event that Business Associate is permitted by law to provide PHI to an agent, Business Associate agrees to ensure that its agents, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees, in writing, to the same restrictions and conditions that apply to Business Associate with respect to such information.

3.5 Right of Access. Business Associate agrees to make PHI available to the Covered Entity or to an individual as directed by the Covered Entity in accordance with the access of individuals

to PHI provisions of the Privacy Standards as set forth in 45 C.F.R. §164.524 in a time and in a manner that are mutually agreeable to the Parties.

3.6 Right of Amendment. Business Associate agrees to make PHI available for amendment and to incorporate any amendments to PHI as directed or agreed to by the Covered Entity in accordance with the amendment of PHI provisions of the Privacy Standards as set forth in 45 C.F.R. §164.526 in a time and manner that are mutually agreeable to the Parties.

3.7 Right to Accounting of Disclosures. Business Associate agrees to make an accounting of disclosures of PHI in the format provided by Covered Entity to Business Associate. Business Associate shall make this information available to Covered Entity or to an individual if directed by Covered Entity as necessary for the Covered Entity to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528.

3.8 Books and Records. Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity in a time and manner that are mutually agreeable to the Parties and to the Secretary for purposes of determining the Covered Entity's compliance with the Privacy Standards.

3.9 Security Provisions. Business Associate will take the following measures:

- a) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the Security Rule;
- b) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the electronic PHI; and
- c) Report to the Covered Entity any security incident of which it becomes aware

ARTICLE IV TERM AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in Section 4.3.

4.2 Termination by the Covered Entity. Covered Entity shall be permitted to terminate this Agreement immediately, and any other agreement between the parties that involves the use or disclosure of PHI, in the event that Business Associate has materially breached this Agreement. In addition, Covered Entity may terminate this Agreement without cause upon thirty days written notice to Business Associate.

4.3 Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate shall, as directed by Covered Entity, return or destroy all PHI received from, or created or received by Business Associate, on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. If return or destruction is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If Covered Entity is in agreement that return or destruction is not feasible, then Business Associate will agree to extend the protections of this Agreement to the information and to limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible, for as long as Business Associate maintains such PHI.

ARTICLE V MISCELLANEOUS

5.1 Indemnification. Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement by Business Associate.

5.2 Regulatory Reference. A reference in this Agreement to a section in the Privacy Standards means the section as in effect or as amended.

5.3 Preemption. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy Standards, as amended, the Privacy Standards shall control. In the event of an inconsistency between the provisions of the Privacy Standards and other applicable confidentiality laws, the provisions of the more restrictive rule will control.

5.4 Independent Entities. None of the provisions of this Agreement is intended to create, nor shall any be construed to create, any relationship between the Parties other than that of independent entities contracting with each other solely to effectuate the provisions of the Agreement.

5.5 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.

5.6 Amendments. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Standards.

5.7 No Third-Party Beneficiaries. This Agreement shall not in any manner whatsoever confer any rights upon or increase the rights of any third-party.

5.8 Survival of Terms. The obligations of Business Associate under Article II and III of this Agreement shall survive the expiration, termination, or cancellation of this Agreement and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

5.9 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Standards.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written below.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____