

BUSINESS ASSOCIATE AGREEMENT

Recital of Defined Terms

"Business Associate" shall mean <INSERT>.

"Electronic PHI" shall have the same meaning found in the Security Rule, 45 C.F.R., 160.103.

"Privacy Rule" shall mean the standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

"Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of the Department.

"Required by law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

"Security Rule" shall mean the Security Standards for the Protection of Electronic Health Information at 45 C.F.R., Part 160 and Part 164, Subparts, A and C.

Whereas, Business Associate has, is, and does perform various services for or on behalf of the Department that may or do in fact contain individually identifiable protected health information ("PHI") as defined by § 164.501 of the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 through 164.

Whereas, the Department, in order to meet its obligations to comply with the privacy and security regulations promulgated under Title II, Subtitle F, §§ 261-264 of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the administrative regulations issued by the Department of Health and Human Services ("DHHS") as found in 45 C.F.R. Parts 160 through 164 (hereafter the Privacy and Security Rules) seeks reasonable assurances from Business Associate that Business Associate will implement and/or maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of all protected health information it receives or possesses from the Department.

Whereas, Business Associate, in order to meet the Department's HIPAA, Privacy and Security Rules requirements, agrees to and will provide such reasonable assurances and further asserts that it has or will implement and/or maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of all protected health information that it receives or possesses from the Department.

Whereas, Business Associate further agrees to and will protect all protected health information against reasonably anticipated threats or hazards to the security or integrity of the information and unauthorized uses or disclosures of the information.

NOW, THEREFORE, the parties agree as follows:

1. BUSINESS ASSOCIATE does hereby assure the Department that BUSINESS ASSOCIATE will appropriately safeguard protected health information made available to or obtained by BUSINESS ASSOCIATE.

2. BUSINESS ASSOCIATE shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Department as required by the Security Rule.
3. In implementation of such assurance and without limiting the obligations of BUSINESS ASSOCIATE otherwise set forth in this Agreement or imposed by applicable law, BUSINESS ASSOCIATE hereby agrees to comply with applicable requirements of law relating to protected health information and with respect to any task or other activity that BUSINESS ASSOCIATE performs on behalf of the Department to the extent the Department would be required to comply with such requirements.
4. The agreement of BUSINESS ASSOCIATE set forth in items 1 and 2 above, and the additional provisions relating to permitted and required uses and disclosures thereof that shall be from time to time provided to BUSINESS ASSOCIATE by the Department in accordance with applicable law constitute a contract between the Department and BUSINESS ASSOCIATE establishing the permitted and required uses and disclosures of such protected health information by BUSINESS ASSOCIATE.
5. In amplification and not in limitation of the provisions of this Agreement, including this Section of this Agreement, BUSINESS ASSOCIATE agrees that it will--
 - a. Not use or further disclose such information other than as permitted or required by this Agreement.
 - b. Not, except as necessary for the proper management and administration of the BUSINESS ASSOCIATE and for the performance of BUSINESS ASSOCIATE's duties under this Agreement use, reproduce, disclose, or provide to third parties any confidential documents or information relating to the Department or patients of the Department without the prior written consent or authorization of the Department or of the Department's patients. If BUSINESS ASSOCIATE uses such information for the purposes set forth above, it will do so only if the disclosure is required by law or if BUSINESS ASSOCIATE obtains reasonable assurances from the person(s) to whom the information is disclosed that the information disclosed will be held confidential and will be used or further disclosed only as required by law or for the purpose for which BUSINESS ASSOCIATE disclosed it to the person(s). BUSINESS ASSOCIATE shall also ensure that the person(s) to whom BUSINESS ASSOCIATE so discloses information notifies the Department of any instances of breach of confidentiality of which such person is aware.
6. BUSINESS ASSOCIATE shall ensure that its personnel, employees, affiliates, and agents maintain the confidentiality of patient health information and business information of the Department. BUSINESS ASSOCIATE shall secure confidentiality agreements from its personnel on forms approved by the Department and shall provide such agreements to the Department upon request.
7. BUSINESS ASSOCIATE shall not use or further disclose the information in a manner that would violate the requirements of applicable law if done by the Department.
 - a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Health Department as specified in the Sexually Transmitted Disease workplan, provided that such use or disclosure

would not violate the Privacy Rule if done by the Health Department or the minimum necessary policies and procedures of the Health Department.

8. BUSINESS ASSOCIATE shall use appropriate safeguards to prevent use or disclosure of such information other than as provided for by this Agreement.
9. BUSINESS ASSOCIATE shall report to the Department any use or disclosure of such information not provided for by this Agreement of which BUSINESS ASSOCIATE becomes aware.
10. BUSINESS ASSOCIATE shall report to the Department any security incident of which it becomes aware.
11. BUSINESS ASSOCIATE shall ensure that any subcontractors or agents to whom BUSINESS ASSOCIATE provides protected health information received from the Department agree to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such information. BUSINESS ASSOCIATE shall provide copies of such agreements to the Department upon request.
12. BUSINESS ASSOCIATE shall make available protected health information in accordance with applicable law.
13. BUSINESS ASSOCIATE shall provide individuals who are the subject of protected health information received from the Department their rights as made applicable to business associates of covered entities.
14. BUSINESS ASSOCIATE shall maintain standard records pursuant to this agreement and to provide such records and other necessary information to the Department as may be requested or required in writing and as permitted by law. BUSINESS ASSOCIATE agrees that all records kept in connection with this Agreement are subject to review and audit by the Department upon reasonable notice and written request by the Department.
15. Make BUSINESS ASSOCIATE's internal practices, books, and records relating to the use and disclosure of protected health information received from the Department available to the Secretary of DHHS for purposes of determining the Department's compliance with applicable law (in all events, BUSINESS ASSOCIATE shall immediately notify the Department upon receipt by BUSINESS ASSOCIATE of any such request and shall provide the Department copies of any such materials).
16. Upon termination of this Agreement by either party for any reason, BUSINESS ASSOCIATE shall return or destroy all protected health information received from the Department that BUSINESS ASSOCIATE still maintains in any form and all copies thereof, shall retain no copies of such information, and shall remain obligated not to use, disclose, or provide such information to third parties unless and until otherwise required to do so by law.
17. BUSINESS ASSOCIATE shall incorporate any amendments or corrections to protected health information when notified pursuant to applicable law.
18. BUSINESS ASSOCIATE agrees to indemnify and hold harmless the Department, its Board of Directors, officers, agents, employees, and personnel ("Indemnified Party") from and against any and all claims, demands, suits, losses, causes of action, or

liability that the Indemnified Party may sustain as a result of the BUSINESS ASSOCIATE's breach of its duties or the indemnifying party's errors or omissions within the terms of this Agreement or vicarious liability of the Department for any act or conduct of the BUSINESS ASSOCIATE adjudged to constitute fraud, misrepresentation, or violation of any law, including violation of any statute or regulation applicable to the conduct of the BUSINESS ASSOCIATE provided pursuant to this Agreement. This indemnification shall include reasonable expenses, including attorney's fees incurred by defending such claims and damages incurred by reason of the indemnifying party's failure to comply with applicable laws, ordinances, and regulations or for damages caused by the indemnifying party.

19. Without limiting the rights and remedies of the Department elsewhere set forth in this Agreement or available under applicable law, the Department may terminate this Agreement without penalty or recourse to the Department if the Department determines that BUSINESS ASSOCIATE has violated a material term of the provisions of this Agreement.
1. BUSINESS ASSOCIATE agrees that this Agreement may be amended from time to time by the Department if and to the extent required by the provisions of 42 U.S.C. 1171 *et seq.* enacted by the HIPAA and regulations promulgated there under in order to assure that this Agreement is consistent therewith.
2. In the event of an inconsistency between the provisions of this agreement and the mandatory provisions of HIPAA and the Privacy and Security Rules, as amended, HIPAA and the Privacy and Security Rules shall control. Where provisions of this agreement are different than those mandated in the HIPAA and the Privacy and Security Rules, but are none the less permitted by HIPAA and the Privacy and Security Rules, the provisions of this agreement shall control.

EXHIBIT A
Scope of Work