BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is made as of _____ (the "Effective Date") between:

Check one: [ ] Covered Entity [ ] Business Associate (the party sharing protected health information, the "Sharing Party"): _____, address _____.

Check one: [ ] Business Associate [ ] Subcontractor (the party handling protected health information for the Sharing Party, the "Receiving Party"): _____, address _____.

1. BACKGROUND AND DEFINITIONS

The Receiving Party provides the following services to the Sharing Party (the "Services"), [ ] under an agreement titled _____ dated _____ (the "Services Agreement"): _____.

"HIPAA Rules" means the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Parts 160 and 164. "PHI" means protected health information, as the HIPAA Rules define it, that the Receiving Party creates, receives, maintains or transmits on behalf of the Sharing Party. "Security Incident" has the meaning given in 45 C.F.R. § 164.304. Other capitalized terms have the meanings given in the HIPAA Rules.

2. PERMITTED USES AND DISCLOSURES

The Receiving Party may use and disclose PHI only as otherwise permitted by this Agreement, as required by law, or [ ] as necessary to perform the Services [ ] for these purposes: _____. It will not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the covered entity, and will limit uses, disclosures and requests to the minimum necessary.

[ ] The Receiving Party may use PHI for its proper management and administration or to carry out its legal responsibilities, and may disclose it for those purposes only if required by law or if it obtains reasonable assurances that the recipient will keep it confidential, use or disclose it only as required by law or for the purpose of the disclosure, and report any breach of confidentiality.

[ ] The Receiving Party may provide data aggregation services relating to the covered entity's health care operations.

[ ] The Receiving Party may de-identify PHI in accordance with 45 C.F.R. § 164.514(a) through (c) and use the de-identified information [ ] only for the Services [ ] for any lawful purpose. If not checked, de-identification needs the Sharing Party's written consent.

3. SAFEGUARDS, REPORTING AND SUBCONTRACTORS

The Receiving Party will use appropriate administrative, physical and technical safeguards and comply with Subpart C of 45 C.F.R. Part 164 for electronic PHI. Additional measures: _____.

The Receiving Party will report to the Sharing Party any use or disclosure of PHI not provided for by this Agreement, any breach of unsecured PHI as 45 C.F.R. § 164.410 requires, and any Security Incident, without unreasonable delay

This general template is provided for informational purposes only and does not constitute legal advice. Requirements vary by state and locality; review current law and attach any disclosures or addenda your situation requires before signing. For a guided state-specific document, visit lawvault.org.

and no later than _____ calendar days after discovery. This deadline never extends the outer limit in 45 C.F.R. § 164.410. A breach report identifies each affected individual to the extent possible and includes the other available information needed for notices to individuals.

Breach notices to individuals are sent by: [ ] the Sharing Party [ ] the Receiving Party, at the Sharing Party's written request and with its approval. [ ] The Receiving Party will reimburse the reasonable costs of a breach it or its subcontractors cause.

The Receiving Party will make sure each subcontractor that handles PHI for it agrees in writing to the same restrictions, conditions and requirements. [ ] Subcontractors need the Sharing Party's prior written consent.

4. INDIVIDUAL RIGHTS AND GOVERNMENT ACCESS

Within _____ days after the Sharing Party asks, the Receiving Party will make PHI in a designated record set available for access (45 C.F.R. § 164.524), make amendments (45 C.F.R. § 164.526), and provide the information needed for an accounting of disclosures (45 C.F.R. § 164.528). It will forward requests it receives directly from individuals within the same time.

To the extent the Receiving Party carries out a covered entity's obligations under Subpart E of 45 C.F.R. Part 164, it will comply with the requirements that apply to the covered entity. It will make its internal practices, books and records relating to PHI available to the Secretary of the U.S. Department of Health and Human Services for determining compliance with the HIPAA Rules.

The Sharing Party will tell the Receiving Party of any limits in the notice of privacy practices, changes in an individual's permission, and restrictions under 45 C.F.R. § 164.522 that affect its use or disclosure of PHI, and will not ask it to use or disclose PHI in a way the HIPAA Rules would not allow the covered entity to.

5. TERM AND TERMINATION

This Agreement lasts until [ ] the Services end [ ] _____. If the Sharing Party determines that the Receiving Party has violated a material term, it may end this Agreement by written notice [ ] if the violation is not cured within _____ days after notice.

When this Agreement ends, the Receiving Party will [ ] return [ ] destroy [ ] return or destroy, as the Sharing Party chooses, all PHI it still maintains, keep no copies, and have its subcontractors do the same. If return or destruction is infeasible, it will extend this Agreement's protections to that PHI and limit further uses and disclosures to the purposes that make return or destruction infeasible. These duties survive.

[ ] Indemnification: [ ] the Receiving Party will [ ] each Party will indemnify the other against third-party claims and resulting losses arising from its breach of this Agreement or of the HIPAA Rules.

This general template is provided for informational purposes only and does not constitute legal advice. Requirements vary by state and locality; review current law and attach any disclosures or addenda your situation requires before signing. For a guided state-specific document, visit lawvault.org.

6. GENERAL TERMS

References to the HIPAA Rules mean those rules as amended, and the Parties will amend this Agreement as needed to comply with them. Ambiguities are resolved to permit compliance with the HIPAA Rules. This Agreement is governed by federal law and, where federal law does not apply, by the laws of the State of _____. If this Agreement conflicts with the Services Agreement about PHI, this Agreement controls. It can be changed only in a signed writing and may be signed in counterparts and electronically. If any part is unenforceable, the rest stays in effect.

Additional terms: _____

SIGNATURES

Sharing Party

Signature: _____ Date: _____

Printed Name: _____

Receiving Party

Signature: _____ Date: _____

Printed Name: _____

This general template is provided for informational purposes only and does not constitute legal advice. Requirements vary by state and locality; review current law and attach any disclosures or addenda your situation requires before signing. For a guided state-specific document, visit lawvault.org.