

**{NAME OF YOUR BUSINESS}  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between {NAME OF YOUR BUSINESS} ({INITIALS OF YOUR BUSINESS}) and \_\_\_\_\_ (“Business Associate”), on this date \_\_\_\_\_, 2003 (“Effective Date”).

**Recitals**

WHEREAS, {INITIALS OF YOUR BUSINESS} and \_\_\_\_\_ (the “Parties”) recognize that they are considered “Covered Entities” as that term is defined within the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and more specifically, the HIPAA privacy regulations, 45 CFR Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”);

WHEREAS, pursuant to the Privacy Rule, all Business Associates and Covered Entities must agree, in writing, to certain mandatory provisions regarding the use and disclosure of Protected Health Information (“PHI”).

WHEREAS, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements of 45 CFR § 164.504(e); and

WHEREAS, the Parties intend to be compliant with the mandates of the Privacy Rule on or before the applicable implementation deadline for Business Associate contracts under the Privacy Rule;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

**1. Definitions**

- a. Catch-all definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.
- b. Specific Definitions:
  - i. “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 Covered Entity.

**2. Obligations and Activities of Business Associate**

- a. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

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- c. 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.
- d. Business Associate agrees to report to Covered Entity any; use or disclosure of the PHI not provided for by this Agreement.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- g. Business Associate agrees to make an amendment(s) to PHI maintained in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- h. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity of the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purpose of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an account of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- j. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

**3. Permitted Uses and Disclosures by Business Associate**

- a. Except as otherwise limited in this Agreement, Business may use or disclose PHI on behalf of , or to provide services to, Covered Entity for the purpose of facilitating the processing of administrative, clinical and financial healthcare transactions, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity:
- b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

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- c. Except as otherwise limited in this agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(i)(B).

**4. Obligations of Covered Entity**

- a. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI or, an this Agreement includes provisions for, Data Aggregation or management and administrative activities of Business Associate.

**5. Terms and Termination**

- a. Term. The Term of this Agreement shall be effective as of 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 unfeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- c. Effect of Termination.
  - i. Except as provided in paragraph (ii) of this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - ii. In the event that Business Associate determines that returning or destroying the PHI is unfeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the

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protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

**6. Miscellaneous**

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and or which compliance is required.
- b. Amendment. 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 Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5(c) or this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the Privacy Rule
- e. State Law: Where any provision of State Law is more stringent or otherwise constitutes a basis upon which the Privacy Rule is preempted, state law controls and the Parties agree to comply fully therewith.
- f. Entire Agreement and Amendment. This agreement is the entire agreement between the Parties in regard to its subject matter and shall supersede any prior agreements. This Agreement may not be amended or modified except by a written amendment signed by the parties, or as required by law or due to subsequent revisions. to the Privacy Rule.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**Business Associate**

**{NAME OF YOUR BUSINESS}**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_