



Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into this ___ day of _____, 20__ between Larimer County, (“Covered Entity”), and _____ “Business Associate”).

RECITALS

- I. Covered Entity is a county government with an address of 200 W. Oak Street, Fort Collins, Colorado.
- II. Business Associate is a _____ (type of organization) that _____ (description of primary functions or activities) with a principal place of business at _____ (address).
- III. Covered Entity, as a Covered Entity defined herein under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) is required to enter into this Agreement to obtain satisfactory assurances that Business Associate, a Business Associate under HIPAA, will appropriately safeguard all Protected Health Information (“PHI”) as defined herein, disclosed, created or received by Business Associate on behalf of, Covered Entity.
- IV. Covered Entity desires to engage Business Associate to perform certain functions for, or on behalf of, Covered Entity involving the disclosure of PHI by Covered Entity to Business Associate, or the creation or use of PHI by Business Associate on behalf of Covered Entity, and Business Associate desires to perform such functions. (Description of the services to be performed should be included here or attached in a specific Addendum).

- V. Business Associate may be considered an organization that provides data transmission of protected health information to Covered Entity and requires access on a routine basis to protected health information or a Vendor of Personal Health Records. As required under Section 13408 of the HITECH Act, the Business Associate will be treated as a business Associate of the Covered Entity.

In consideration of the mutual promises below and the exchange of information pursuant to this agreement and in order to comply with all legal requirements for the protection of this information, the parties therefore agree as follows:

A. Definitions of Terms

1. Agreement means this Business Associate Agreement.
2. Breach shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. HITECH Act Subtitle D.
3. Business Associate shall have the meaning given to such term in 45 C.F.R. section 160.103.
4. C.F.R. shall mean the Code of Federal Regulations.
5. Designated Record Set shall have the meaning given to such term in 45 C.F.R. section 164.501.
6. Covered Entity shall have the meaning given to such term in 45 C.F.R. section 160.103.
7. Electronic Health Record shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
8. Electronic Protected Health Information means Protected Health Information that is transmitted by Electronic Media (as defined in the Security and Privacy Rule) or maintained in Electronic Media.
9. Personal Health Record shall mean an electronic record of identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared and controlled by or primarily for the individual. HITECH Act Subtitle D.
10. Protected Health Information or PHI shall have the meaning given to such term in 45 C.F.R. section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
11. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
12. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
13. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
14. Security Rule shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 162, and Parts 164, Subparts A and C. The application of Security provisions Sections 164.308; 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity.

15. Unsecured PHR Identifiable Health Information is information that is not protected through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2).
16. Vendor of Personal Health Records shall mean an entity, other than a covered entity that offers or maintains a personal health record. HITECH Act Subtitle D.

B. Obligations and Activities of Business Associate.

1. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
4. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
5. Business Associate agrees to ensure that any agent, including a subBusiness Associate, to whom it provides Protected Health Information 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.
6. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 CFR § 164.524.
7. Business Associate agrees to make any amendment(s) to Protected Health Information 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 the Covered Entity.
8. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner designated by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.
9. 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 accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

10. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by the Covered Entity, information collected in accordance with Section B of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
11. Business Associate shall maintain a comprehensive security program appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities as defined in the Security Rule.
12. Business Associate and its agents and subBusiness Associate are prohibited from directly or indirectly receiving any remuneration in exchange for an individual's protected health information unless the individual provides a valid authorization.
13. Business Associate shall contact the Covered Entity immediately in the event that a breach of data has been discovered for unprotected health information.
 - 13.1 The notification should include the identification of each individual whose unsecured protected health information has been, or is reasonably believed to have been accessed, acquired or disclosed during such breach.
 - 13.2 Notification to individuals must be made within 60 days from discovering the breach. Notification must be coordinated with and approved by the Covered Entity.
 - 13.3 Covered Entity will coordinate with Business Associate in the determination of additional specific actions that will be required of the Business Associate for mitigation of the breach.
 - 13.4 If the Business Associate is a vendor of personal health records, notification of the breach will need to be made with the Federal Trade Commission.
14. Business Associate shall be responsible for any and all costs associated with the notification and mitigation of a data breach that has occurred because of the negligence of the Business Associate.
15. Business Associate shall be subject to prosecution by the Department of Justice for criminal violations of HIPAA if the Business Associate obtains or discloses individually identifiable health information without authorization, and shall be responsible for any an all costs associated with prosecution.

C. Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions

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, Covered Entity as specified in [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Specific Use and Disclosure Provisions [only necessary if parties wish to allow Business Associate to engage in such activities]

1. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. To the extent practical, the information should be in a limited data set or if necessary to the minimum necessary information.
2. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information 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.
3. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
4. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).
5. Business Associate is required to comply with an individual's restriction request, except as otherwise required by law, if it is to a health plan for payment or health care operation and pertains to a health care item or service for which the health care provider was paid in full "out of pocket."

Reporting Improper Use or Disclosure

1. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement immediately from the time becomes aware of such use or disclosure. Business Associate shall report to Covered Entity any Security Incident and/or breach immediately from the time it becomes aware of such incident.

D. Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions [provisions dependent on business arrangement]

1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent

that such changes may affect Business Associate's use or disclosure of Protected Health Information.

3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

E. Term and Termination

1. Term. The Term of this Agreement shall be effective as of [Insert Effective Date]. The term of this Agreement shall terminate when all of the Protected Health Information 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 Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section. E.
2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. 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;
 - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
3. Effect of Termination.
 - a. Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information 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 subBusiness Associates or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon determination by Covered Entity that return or destruction of

Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

F. Indemnification.

Indemnification. Each party will indemnify and hold harmless the other party to this Agreement from and against all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in conjunction with:

- a. any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and
- b. any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.

G. Miscellaneous

1. Regulatory References. A reference in this Agreement to a section in the Privacy or Security Rule or HITECH Act and its associated regulations means the section as in effect or as amended.
2. 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 or Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 or the HITECH Act from the American Recovery and Reinvestment Act of 2009 and its associated regulations.
3. Survival. The respective rights and obligations of Business Associate under Section 3 of this Agreement shall survive the termination of this Agreement.
4. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rule or HITECH Act and its associated regulations.
5. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow or to such other addresses as the parties may hereinafter designate in writing:

Covered Entity: _____

Business Associate: _____

Any such notice shall be deemed to have been given, if mailed as provided herein, as of the date mailed.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement to be effective as of _____ (effective date of the agreement).

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____