

**INSERT INTO SERVICES AGREEMENT
for
BUSINESS ASSOCIATE AGREEMENTS**

If you are a HIPAA covered entity entering into an agreement according to which another entity or individual will use or receive individually identifiable health information in the course of providing services on behalf of The Hospital, the following insert into the services agreement, adapted for *The Hospital*, should be considered.

ARTICLE XL
Use and Disclosure of PHI

A. Acknowledgment of HIPAA Obligations and Other Regulations Implementing the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320(d) (“HIPAA”)).

The parties acknowledge that federal regulations relating to the confidentiality of individually identifiable health information require covered entities to comply with the privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 65 Fed. Reg. 82462-82829 (December 28, 2000) (“Privacy Standards”). The Privacy Standards require The Hospital to ensure that business associates who receive confidential information in the course of providing services on behalf of The Hospital comply with certain obligations regarding the confidentiality of health information.

B. Purposes for which Protected Health Information May be Used or Disclosed. In connection with the services provided by Business Associate on behalf of The Hospital pursuant to this Agreement, Covered Entity may use and disclose protected health information (“PHI”), as defined in **Exhibit A** hereto, to Business Associate for the purposes of _____ (*describe purpose of disclosure, which will relate directly to the services provided in the agreement, e.g., claims processing, audit, design of computer system, etc.*).

C. Business Associate Obligations. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, including, but not limited to the Privacy Standards published by the United States Department of Health and Human Services implementing Part C of HIPAA, including without limitation:

1. Use of PHI. Business Associate shall not use PHI except as necessary to fulfill the purposes of this Agreement. Business Associate is permitted to use and disclose PHI as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities and its responsibilities under this Agreement. However, the Business Associate shall in such case:
 - (a) provide training to members of its workforce regarding the confidentiality requirements in the Privacy Standards and this agreement;

- (b) obtain reasonable assurances from the person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity;
 - (c) agree to notify The Hospital of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards; and
 - (d) ensure that all disclosures of PHI are subject to the principle of “minimum necessary use and disclosure,” *i.e.*, only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request may be disclosed.
2. Disclosure to Third Parties. If Business Associate discloses PHI received from The Hospital, or created or received by Business Associate on behalf of The Hospital, to agents, including a subcontractor, Business Associate shall require the agent to agree to the same restrictions and conditions that apply to the Business Associate under this Agreement. The Business Associate shall be fully liable to The Hospital for any acts, failures or omissions of the Agent in providing the services as if they were the Business Associate’s own acts, failures or omissions, to the extent permitted by law. The Business Associate further expressly warrants that its Agents will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
3. Data Aggregation. In the event that the Business Associate works for more than one Covered Entity, Business Associate is permitted to use and disclose PHI, but only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the Privacy Standards.
4. De-Identified Information. Use and disclosure of de-identified health information is permitted, but only if (i) the precise use is disclosed to The Hospital and permitted by The Hospital in its sole discretion and (ii) the de-identification is in compliance with 45 CFR §164.502(d), and any such de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a)(and (b), or such regulations as they may be amended from time to time.
5. Notice of Privacy Practices. Business Associate agrees that it will abide by the limitations of any Notice of Privacy Practices (“Notice”) published by The Hospital of which it has knowledge. The Hospital shall provide to Business Associate such Notice when it is adopted. Any use or disclosure permitted by this Agreement may be amended by such Notice. The amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to such notice.

6. Withdrawal of Consent or Authorization. If the use or disclosure of PHI in this agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and the individual revokes such consent or authorization in writing, or the effective date of such authorization has expired, or the consent or authorization is found to be defective in any manner that renders it invalid, the Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.
7. Use or Disclosure that Would Violate HIPAA. Business Associate is prohibited from further use or disclosure of PHI in a manner that would violate the requirements of the Privacy Standards if the PHI were used or disclosed by The Hospital.
8. Safeguards. Business Associate is required to maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this agreement or as required by law.
9. Records Management. **Upon termination of this agreement, Business Associate agrees to return or destroy all PHI received from The Hospital that Business Associate maintains in any form and shall comply with federal and state laws as they may be amended from time to time governing the maintenance or retention of PHI. If the return or destruction of PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.**
10. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a designated record set (as defined in Exhibit A) on behalf of The Hospital, Business Associate agrees as follows:
 - (a) **Correction of PHI.** Business Associate agrees that it will amend PHI maintained by Business Associate as requested by The Hospital.
 - (b) **Individual Right to Copy or Inspection.** Business Associate agrees that, if it maintains a designated record set for The Hospital, it will permit an individual to inspect or copy PHI about the individual in that set under conditions and limitations required under 45 CFR § 164.524 as it may be amended from time to time. The Hospital is required to take action on such requests as soon as possible but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist The Hospital in meeting this deadline, to the extent the requested information is

maintained by Business Associate and not The Hospital. The information shall be provided in the form or format requested, if it is readily producible in such form or format; or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged.

- (c) Individual Right to Amendment. Business Associate agrees that it will accommodate an individual's right to have access to and amend PHI about the individual in a designated record set in accordance with the Privacy Standards set forth at 45 CFR § 164.526 as it may be amended from time to time, unless the regulation provides for a denial or exception that applies.

11. Accounting of Disclosures. Business Associate agrees to make available to the individual and/or The Hospital from whom the PHI originated, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528 as it may be amended from time to time, and incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including any disclosures prior to the compliance date of the Privacy Standards).

- (a) The Hospital is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist The Hospital in meeting this deadline.
- (b) Such accounting must be provided without cost to the individual or The Hospital if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request.
- (c) Such accounting shall be provided as long as the Business Associate maintains the PHI.

D. Internal Practices, Books, and Records. The Business Associate shall make available its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by the Business Associate on behalf of The Hospital to the U.S. Department of Health and Human Services or its agents for the purpose of determining The Hospital's compliance with the Privacy Standards, or any other health oversight agency, or to The Hospital.

E. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless The Hospital from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's

fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate in connection with the performance of Business Associate's duties under this Agreement. This indemnity shall apply even if The Hospital is *alleged* to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity. Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of the Business Associate. The Hospital shall provide the Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist the Business Associate in establishing a defense to such action. These indemnities shall survive termination of this agreement and The Hospital reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

- F. Rights of Proprietary Information. The Hospital retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
- G. Termination for Breach. Without limiting the termination provisions herein, if Business Associate breaches any provision in this Article XL, The Hospital may, at its option, access and audit the records of Business Associate related to its use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as The Hospital may determine is necessary to ensure compliance with this Article; or The Hospital may terminate this Agreement on a date specified by The Hospital.
- H. Survival of Key Provisions. The provisions of this Article shall survive the termination of this Agreement.

Source: 65 Fed. Reg. 82462-82829 (December 28, 2000) and as it may be amended from time to time.