

Business Associate Agreement

This Business Associate Contract (Agreement) is entered into by and between _____, as a Covered Entity as defined in relevant federal and state law, and HMS Agency, Inc., as their Business Associate, effective as of April 14, 2004 (Effective Date).

WHEREAS, Covered Entity is a group health plan as defined in the privacy rules adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rules).

WHEREAS, Business Associate is an insurance broker/agent that provides consulting services to plan sponsors and group health plans on matter related to employee benefits.

WHEREAS, Business Associate has been retained by the Covered Entity to perform a function or activity on behalf of the Covered Entity that requires that the Business Associate have access to Protected Health Information (PHI)

WHEREAS, Covered Entity desires to receive satisfactory assurances from the Business Associate that it will comply with the obligation required of business associate by the HIPAA Privacy Rules.

WHEREAS, the parties wish to set forth their understandings with regard to the use and disclosure of PHI by the Business Associate in Performance of its obligations.

NOW THEREFORE, in consideration of the mutual promises set forth below, the parties hereby agree to follows:

A. USE AND DISCLOSURE OF PHI

Covered Entity hereby grants Business Associate permission to use, disclose, and request from third parties PHI on behalf of Covered Entity or an organized health care arrangement in which the Covered Entity is a member in order to:

1. Perform or assist in performing a function or activity regulated by the HIPAA Privacy Rules, including, but not limited to, claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, repricing, renewal or replacement of a contract, conducting planning-related analysis related to managing the employee benefit plans, and customer service.
2. Assist the Covered Entity's other business associates retained to provide legal advice, accounting, actuarial, consulting, data aggregation, management, administration, accreditation, or financial services to the Covered Entity or to an organized health care arrangement in which the Covered Entity participates.
3. Allow Business Associate to properly manage and administer the Business Associate's organization or to carry out the legal responsibilities of the Businesses Associate.

4. Perform functions, activities, or services for, or on behalf of, Covered Entity as specified above, except as otherwise limited by this Agreement, or if such use or disclosure would violate the HIPAA Privacy Rules if done by the Covered Entity.

B. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. **Use of Protected Health Information (PHI).** Business Associate shall not use or further disclose PHI other than as permitted by this agreement or as required by law.
2. **Safeguards.** Business Associates agrees that it will implement reasonable safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement. Business Associate agrees that performance of its obligations to implement safeguards includes establishing procedures that limit access to PHI within its organization to those employees with a need to know.
3. **Unauthorized Disclosures of PHI.** Business Associate shall, within ten (10) business days of becoming aware of a disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors, or agents or by a third party to which Business Associate disclosed PHI, report to Covered Entity any such disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of the unauthorized disclosure.
4. **Agreements With Third Parties.** 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 the Covered Entity, agrees to the same restrictions and conditions that apply through its Agreement to Business Associate with respect of such information.
5. **Access to Information.** Within ten (10) business days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such as PHI for so long as such information is maintained in a Designated Record Set. In the event any individual who is entitled to receive PHI request access to PHI directly from the Business Associate, Business Associate shall respond to the request for PHI within ten (10) business days. Any denials of access to the PHI requested shall be the responsibility of the Business Associate.
6. **Availability of PHI for Amendment.** Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Entity or an individual, and in the time and manner designated by Covered Entity.
7. **Inspection of Books and Records.** Business Associate agrees to make its 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, to the Secretary of the U.S. Department of Health and Human Services or designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
8. **Accounting of Disclosures.** Business Associate agrees to maintain and make available to the Covered Entity an accounting of disclosures of PHI as would be

required for Covered Entity to respond to a request by an individual made in accordance with 45 CFR 164.526. Business Associate shall provide an accounting of disclosures made during the six (6) years prior to the date which the accounting is requested. At a minimum, the accounting of disclosures shall include the following information:

- a. Date of disclosure,
- b. The name of the person or entity who received the PHI and if known, the address of such entity or person,
- c. A brief description of the PHI disclosed, and
- d. A brief statement of the purpose of such disclosure that includes an explanation of the basis of such disclosure.

In the event the request for an accounting is delivered directly to the business Associate, the Business Associate shall respond to the request within ten (10) business days. Any denials of a request for an accounting shall be the responsibility of the Business Associate. Business associate agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

C. OBLIGATIONS OF COVERED ENTITY

1. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

D. 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 HIPAA if done by the Covered Entity, except that Business Associate shall be permitted to use PHI as set forth in this Agreement.

E. TERMINATION

1. **Term.** The term of this Agreement shall begin on the Effective Date and shall remain in effect until terminated under Section E(2) of this Agreement.
2. **Termination.** This Agreement shall be terminated only as follows:
 - a. **Termination For Cause.** This Agreement may be terminated by the Covered Entity upon fifteen (15) business days written notice to the Business Associate in the event that the Business Associate breaches any provision contained in Paragraphs A or B of this Agreement and such breach is not cured within such fifteen (15) day period; provided, however,

that in the event that termination of this Agreement is not feasible in the Covered Entity's sole discretion, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

- b. Termination Due To Change in Law. Either party may terminate this agreement effective upon thirty (30) days advance written notice to the other party in the event that the terminating party has sought amendment of this Agreement pursuant to Paragraph G(1) and no amendment has been agreed upon.
 - c. Termination Without Cause. Either may terminate this Agreement effective upon ninety (90) days advance written notice to the other party given with or without any reason.
3. Return or Destruction of PHI
 - a. Upon termination of this Agreement, 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 PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
 - b. Notwithstanding the above, to the extent that the Business Associate determines that it is not feasible to return or destroy such PHI, the terms and provision of Paragraphs A, B and C shall survive termination of this Agreement and such PHI shall be used or disclosed solely for such purpose or purpose which prevented the return or destruction of such PHI

F. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms 45 CFR 160.103 and 164.501. Capitalized terms within this Agreement are defined in the text or as follows:

1. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is (a) medical records and billing records about individuals maintained by or for the Covered Entity, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein the term records means any item, collection or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.
2. "Protected Health Information" (PHI as defined at 45 CFR 164.501) means information that is received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, whether oral, written, or electric, that
 - a. is created or received by a health care provider, health plan, employer, or health care clearing house, and
 - b. relates to the past, present and future physical or mental health or condition of an individual; provision of healthcare to an individual; or the past, present and

future payment for the provision of healthcare to an individual; and (1) identifies the individual or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

G. GENERAL PROVISIONS

1. **Amendment.** This Agreement may be amended only by the mutual written agreement of the parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of HIPAA.
2. **Indemnification.** Business Associate shall release indemnification and hold Covered Entity harmless from and against my claims, fee, and costs, including, without limitation, reasonable attorneys' fees and costs, which are related to Business Associate's failure to perform its obligations under this Agreement. Covered Entity shall release, indemnify and hold Business Associate harmless from and against any claims, fees and costs, including without limitation, reasonable attorneys fees and costs, which are related to Covered Entity's alleged improper use or disclosure of Protected Health Information.
3. **Remedies.** The parties acknowledge that breach of Paragraphs A or B of this Agreement may cause irreparable harm for which there is no adequate remedy at law. In the event of a breach, or if Covered Entity has actual notice of an intended breach, Covered Entity shall be entitled to a remedy of specific performance and/or injunction refraining Business Associate from violating this Agreement. The parties agree the election of the Covered Entity may have to recover damages
4. **Survival.** Business Associate's obligation to limit its use and disclosure of PHI as set out in Paragraphs A and B survive the termination of this Agreement so long as Business Associate has PHI received during the performance of its services as described in this Agreement.
5. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.
6. **Assigns.** Neither this Agreement nor any of the rights, benefits, duties, or obligations provided herein may be assigned by any party to this Agreement without the prior written consent of the other party.
7. **Third Party Beneficiaries.** Nothing in this Agreement shall be deemed to create any rights or remedies in any third party.
8. **Interpretation.** Any ambiguity in this Agreement resolved in favor of a meaning that permits the Covered Entity to comply with HIPAA.
9. **Notices.** Any notice given under this Agreement must be in writing and delivered via first class mail, via reputable over night courier service, or in person to the parties' respective addresses as first written above or to such other address as the parties may from time to time designate in writing.

The parties hereby acknowledge and agree to the terms of this Agreement consisting of a total of six (6) pages, including this signature page, which together represent an Agreement between the parties concerning use and disclosure of Protected Health Information.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

Company Name (“Covered Entity”):

By: _____, _____ (title)

Company Name (“Business Associate”)

By: _____, _____ (title)