

HIPAA - BUSINESS ASSOCIATE SUBCONTRACTOR AGREEMENT

_____, a (type of business) ("Contractor") is the business associate of its _____ ("Covered Entities") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA privacy and security regulations, 45 CFR Parts 160 and 164 (the "HIPAA Regulations"). As required by HIPAA, Contractor has business associate agreements with its Covered Entity clients (Contractor's "Business Associate Contracts"), the undersigned Subcontractor has or is entering information agreements with Contractor (the "Principal Agreements") to assist Contractor in providing services to Contractor's Covered Entity Clients. The parties are entering into this agreement to ensure that Subcontractor complies with the requirements of Contractor's Business Associate Agreements in providing services to or for the benefit of Contractor's Covered Entity Clients, and under the Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). Terms used in this agreement have the meanings given them in the HIPAA Regulations and the HITECH Act, as applicable. This agreement applies to any Protected Health Information that Subcontractor receives from Contractor, or directly from a Covered Entity client of Contractor, or creates or receives on behalf of Contractor or a Covered Entity client of Contractor.

HIPAA

- 1) Subcontractor may use and disclose Protected Health Information to provide Contractor or its Covered Entity client with the services contemplated by the Principal Agreements. Except as expressly provided below, this agreement does not authorize Subcontractor to make any use or disclosure of the information that Contractor or the Covered Entity would not be permitted to make.
- 2) Subcontractor will:
 - a) Not use or further disclose Protected Health Information except as permitted or required by the Principal Agreements or this Agreement, or as required by law.
 - b) Use appropriate safeguards, and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information, to prevent use or disclosure of Covered Entity's Protected Health Information other than as provided for by the Principal Agreements or this Agreement;
 - c) Report to Contractor any use or disclosure of Protected Health Information not provided for by the Principal Agreements or this Agreement, and any security incident affecting a Covered Entity's electronic Protected Health Information, of which Subcontractor becomes aware including breaches of unsecured protected health information as required by the Data Breach Notification Rule (45 CFR §. The report shall be made as soon as practical, and in any event within two (2) business days of discovery. The report shall be made initially by telephone at 831-465-7874 or another number of which Contractor may from time to time notify Subcontractor, with written confirmation addressed to Contractor at the address below.
 - d) Take appropriate measures, as directed by Contractor and at Subcontractor's expense, to mitigate the harmful effects of any security incident or any unauthorized use or disclosure of Protected Health Information, and provide such reports as Contractor may reasonably request concerning such measures.
 - e) Not disclose Protected Health Information to any person (other than its employed workforce) without the prior written consent of Contractor, and ensure that Subcontractor's agents and subcontractors to whom Subcontractor provides Protected Health Information with Contractor's consent agree in writing to the same restrictions and conditions that apply to Subcontractor.
 - f) Make any Protected Health Information that Subcontractor stores or maintains for a Covered Entity client of Contractor in a designated record set available so the Covered Entity can meet its obligation to provide access to the information, and provide a copy of such information to Contractor or the Covered Entity on request (including an electronic copy if Subcontractor maintains the information in electronic form).
 - g) Make any Protected Health Information that Subcontractor maintains for a Covered Entity in a designated record set available for amendment, and incorporate any amendments Contractor or the Covered Entity requests.
 - h) Maintain and provide Contractor or the Covered Entity, as requested, with information concerning disclosures that Subcontractor makes of Protected Health Information to enable Covered Entity to comply with its obligation to account for disclosures.
 - i) To the extent that Business Associate carries out Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;
 - j) Make Subcontractor's internal practices, books, and records relating to Subcontractor's use and disclosure of Protected Health Information available to Contractor, the Covered Entity and the Secretary of the United States Department of Health and Human Services, for purposes of determining the Covered Entity's, Contractor's and Subcontractor's compliance with their legal obligations.
 - k) Comply with any additional terms of Contractor's Business Associate Contracts which Contractor furnishes to Subcontractor in writing.
 - l) Upon termination of the Principal Agreements, return or destroy all Protected Health information that Subcontractor maintains in any form and retain no copies of such information or, if return or destruction is not feasible (as determined by Contractor), extend the protections of this agreement to that information and limit further use and disclosure to those purposes that make the return or destruction of the information infeasible.

HITECH ACT

- 3) As required by the HITECH Act:
 - a) Subcontractor will comply with the provisions of the HIPAA Security Rule that are made applicable to business associates by section 13401(a) of the HITECH Act, with the additional provisions of the HITECH Act relating to security that are made applicable to business associates and *Underlined provisions have been added or changed to comply with the final HITECH Act Rule issued January 25, 2013, 78 Fed. Reg. p. 5566.*

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incorporated into business associate contracts by section 13401(a) of the HITECH Act, and with the additional provisions of the HITECH Act relating to privacy that are made applicable to business associates and incorporated into business associate contracts by section 13404(a) of the HITECH Act

b) Subcontractor will report to Covered Entity the discovery of any breach of unsecured Protected Health Information that Subcontractor accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses on Covered Entity's behalf, in compliance with the requirements of Section 13402 of the HITECH Act and the regulations promulgated thereunder (45 CFR Parts 160 and 164, Subpart D). All such reports shall be made as provided in paragraph 2(c) above.

GENERAL PROVISIONS

- 4) If Covered Entity determines that Subcontractor has violated a material term of this agreement, Covered Entity may immediately terminate the Principal Agreements.
- 5) Subcontractor shall defend, indemnify and hold harmless Contractor and its Covered Entity Clients against any claim, liability, cost or expense arising out of the acts or omissions of Subcontractor or its agents, employees and subcontractors, including any breach of the security or confidentiality of Protected Health Information in the possession of Subcontractor or its employees, agents or contractors, or as a result of access to such information by Subcontractor or its employees, agents or contractors. Such expenses include expenses of notification and remediation determined to be necessary by Contractor or the affected Covered Entity.
- 6) Subcontractor is an independent contractor. Nothing in this Agreement or the Principal Agreements shall be construed to constitute Subcontractor the agent of Contractor or any Covered Entity.
- 7) This agreement is to be interpreted in accordance with the Health Insurance Portability and Accountability Act of 1996, the HITECH Act, and the regulations promulgated thereunder, as the same may be amended from time to time. In the event of any change in such laws or regulations, or the publication of any guidance concerning such laws or regulations by agencies responsible for administering them, Contractor may amend this Agreement to conform to such change or guidance by giving Subcontractor written notice of such amendment, and such amendment shall be effective upon delivery to Subcontractor unless Subcontractor gives notice within thirty (30) days of receipt of the amendment of its rejection thereof. Following delivery of notice of rejection, Contractor may terminate the Principal Agreements on written notice to Subcontractor.
- 8) Any notice required or permitted to be given under this Agreement shall be given as provided in the Principal Agreements, or if no method of giving notice is provided therein, notice shall be deemed delivered two business days after it is deposited in the United States mail, first class postage prepaid, return receipt requested, and addressed to a party at the address set forth below. A party may change its address for notice by giving notice in accordance with this section.

Executed on the dates set forth below:

Subcontractor

Contractor

Signature:

Signature:

Name/Title:

Name/Title:

Date:

Date:

Address:

Address:
