

SAMPLE BUSINESS ASSOCIATE PROVISIONS

Section X. Security and Confidentiality. If Contractor receives any individually identifiable health information from Covered Entity (“Protected Health Information” or “PHI”), or creates or receives any PHI on behalf of Covered Entity, Contractor shall maintain the security and confidentiality of such PHI as required of Covered Entity by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder. Without limiting the foregoing:

1. Use of PHI. Contractor shall not use PHI otherwise than as expressly permitted by this agreement, or as required by law. However, Contractor may use PHI for purposes of managing its internal business processes relating to its functions under this agreement.
2. Disclosure of PHI.
 - a) Disclosure to third parties. Contractor shall not disclose PHI to any other person (other than members of Contractor’s workforce), except as approved by Covered Entity in writing. Any such disclosure shall be made only upon the written agreement of the subcontractor to be bound by the provisions of this section, for the express benefit of Contractor and Covered Entity.
 - b) Disclosure to workforce. Contractor shall not disclose PHI to any member of its workforce unless Contractor has advised such person of Contractor’s obligations under this section, and of the consequences for such person and for Contractor of violating them. Contractor shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this agreement.
3. Safeguards. Contractor shall use appropriate safeguards to prevent use or disclosure of PHI otherwise than as permitted by this agreement. Contractor shall provide Covered Entity with such information concerning such safeguards as Covered Entity may from time to time request, and shall, upon reasonable request, give Covered Entity access for inspection and copying to Contractor’s facilities used for the maintenance or processing of PHI, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Contractor’s compliance with this agreement.
4. Accounting of Disclosures. Contractor shall maintain a record of all disclosures of PHI made otherwise than for the purposes of this agreement, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. Contractor shall make such record available to Covered Entity on request.
5. Reporting. Contractor shall report to Covered Entity any unauthorized use or disclosure of PHI by Contractor or its workforce or contractors, and the remedial action taken or proposed to be taken with respect to such use or disclosure.
6. Disclosure to U.S. Department of Health and Human Services. If Covered Entity is required by law to obtain the following undertaking from Contractor, Contractor shall make its internal practices, books, and records relating to the use and disclosure of health information received from Covered Entity (or created or received by Contractor on behalf of Covered Entity) available to the Subscriber and to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Covered Entity’s compliance with HIPAA.

7. *[Required only if the Contractor maintains a designated record set on behalf of Covered Entity]*
Access by Individuals. Within ten (10) days of request by Covered Entity, Contractor shall permit any individual whose PHI is maintained by Contractor to have access to and to copy his or her PHI, in the format requested unless it is not readily producible in such format, in which case it shall be produced in hard copy format.
8. *[Required only if the Contractor maintains a designated record set on behalf of Covered Entity]*
Correction of PHI. Amend PHI maintained by Contractor in such manner as Covered Entity may from time to time request.
9. Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Contractor, amend this agreement in such manner as Covered Entity determines necessary to comply with such law or regulation. If Contractor disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate this agreement on written notice to the other.
10. Breach. Without limiting the rights of the parties pursuant to section *[refer to general section on breach]* of this agreement, if Contractor breaches its obligations under this section, Covered Entity may, at its option:
 - a) Exercise any of its rights of access and inspection under paragraph 3 of this section;
 - b) Require Contractor to submit to a plan of monitoring and reporting, as Covered Entity may determine necessary to maintain compliance with this agreement; and such plan shall be a part of this agreement;
 - c) Terminate this agreement, with or without an opportunity to cure the breach.

Covered Entity's remedies under this section and section *[refer to general section on breach]* shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
11. Procedure upon Termination. Upon termination of this agreement Contractor shall return or destroy all PHI that it maintains in any form, and shall retain no copies of such information or, if the parties agree that return or destruction is not feasible, it shall continue to extend the protections of this agreement to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.