

# HIPAA Business Associate Agreement

State of South Dakota  
Business Associate Agreement

**Whereas**, \_\_\_\_\_ (Covered Entity) and \_\_\_\_\_ (Business Associate) intend to protect the privacy and security of Protected Health Information (PHI) to which the Business Associate may have access as a resident of the home office of the Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, ), as amended, 42 U.S.C. § 602(a)(1)(A)(iv), 42 C.F.R. Part 2, 45 C.F.R. § 205.50, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance.

**Whereas**, Business Associate is not an employee or contractor of the Covered Entity and will not access, create, or obtain PHI from or on behalf of the Covered Entity.

**Now, therefore**, Covered Entity and Business Associate agree as follows:

## 1. Definitions.

- A. "Business Associate" shall have the meaning given to such term under HIPAA, the HITECH Act, applicable regulations, and agency guidance.
- B. "Covered Entity" shall have the meaning given to such term under HIPAA, the HITECH Act, and applicable regulations and agency guidance.
- C. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- D. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- E. "Privacy Rule" shall mean the standards for privacy of individually identifiable health information in 45 CFR Parts 160 and 164, as amended, and related agency guidance.
- F. "Protected Health Information" or "PHI" means any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, and agency guidance. PHI also includes any and all information that can be used to identify a current or former applicant or recipient of benefits or services of Covered Entity (or Covered Entity's contractors/business associates).
- G. "Security Rule" shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- H. "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH regulations and agency guidance or as otherwise defined in the HITECH Act.

2. **Stated Purposes for which Business Associate May Use or Disclose PHI.** The Parties hereby agree that the Business Associate shall not be permitted to use and/or disclose PHI provided by or obtained on behalf of the Covered Identity. **NO DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.**
- A. Business Associate hereby agrees that PHI obtained or accessed through the Covered Entity shall not be further used or disclosed.
  - B. Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI.
  - C. Business Associate hereby agrees to report to Dr. Amy Marschall within two (2) days of discovery of any use or disclosure of PHI.
  - D. Business Associate shall not attempt to access PHI from the Covered Entity, including but not limited to electronic records, paper records, or session content.
  - E. Business Associate shall maintain security of any PHI accessed, whether intentionally or inadvertently.
3. **Obligations of Covered Entity.**
- A. Covered Entity shall provide Business Associate with the notice of privacy policy that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice.
  - B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Entity's permitted or required uses and disclosures.
  - C. 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 and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

\_\_\_\_\_  
**Covered Entity's Signature**

\_\_\_\_\_  
**Covered Entity's Name**

\_\_\_\_\_  
**Business Associate's Signature**

\_\_\_\_\_  
**Business Associate's Name**

Date: \_\_\_\_\_