

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF ELDER AFFAIRS
AND
<Contractor Name>**

THIS AGREEMENT is made and entered into between Florida Department of Elder Affairs (Department or DOEA) and <Contractor Name> (Business Associate). Collectively, Department and Business Associate are hereinafter referred to as “Parties.”

WHEREAS, as provided by federal law, Title XIII of the American Recovery and Reinvestment Act of 2009, also known as the Health Information Technology for Economic and Clinical Health (HITECH) Act, requires a Business Associate that contracts with Department, a Health Insurance Portability and Accountability Act of 1996 (HIPAA) Covered Entity, to comply with the provisions of HIPAA Privacy and Security Rules (45 Code of Federal Regulations Parts 160 and 164).

WHEREAS, the Parties to this Agreement mutually agree that the following provisions constitute a Business Associate Agreement for purposes of complying with the requirements of HIPAA and Privacy and Security Regulations, 45 Code of Federal Regulations (CFR) Parts 160 and 164.

WHEREAS, the Parties agree to work together in good faith to carry out the terms and conditions of this Agreement and will do so in a timely manner.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

I. PURPOSE

Business Associate may obtain Protected Health Information (PHI) from Department, a covered entity, in the performance of one or more contracts or agreements between Department and Business Associate. Business Associate and subcontractors of Business Associate that provide services in relation to said contracts or agreements are permitted to receive and use PHI in connection with said contracts or agreements, subject to the terms of this Agreement and federal and state law.

- A.** Department, recognizes the requirements of HIPAA and has indicated its intent to comply.
- B.** HIPAA regulations establish specific conditions on when and how covered entities may share information with business associates who perform functions for the covered entity.
- C.** HIPAA requires the Department and the Business Associate to enter into a contract or agreement meeting certain standards and containing specific requirements to protect the confidentiality and security of patients, as set forth in, but not limited to, the Code of Federal Regulations, specifically 45 CFR §§164.502(e), 164.504(e), 164.308(b), and 164.314(a), and this Agreement.
- D.** Business Associate shall use appropriate safeguards and comply with subpart C of 45 CFR Part 164 with respect to electronic PHI.
- E.** HITECH Act (2009), the American Recovery and Reinvestment Act (2009), and Part A, Improved Privacy Provisions and Security Provisions located at 42 United States Code §§17931 and 17934 (2010), require business associates of covered entities to comply with HIPAA security rules as set forth in, but not limited to, 45 CFR §§164.308, 164.310, 164.312, and 164.316, 45 CFR §164.502(e)(2), and 45 CFR §164.504(e). Such sections apply to a business associate of a covered

entity in the same manner that such sections apply to the covered entity (Department).

II. TERM OF AGREEMENT

- A.** This Agreement is effective upon the last date of signature by the Parties and will expire once Business Associate no longer has any PHI in its possession, whether by destruction or return to Department, or until terminated in writing by either party, whichever is earlier.
- B.** This Agreement may be renewed in writing with appropriate modifications as agreed upon by both Parties for a period not to exceed three (3) years or the term of the original Agreement, whichever is longer, in accordance with Sections 287.057(13) and 287.058(1)(g), F.S., and is contingent upon the satisfactory compliance of all Parties with the terms of this Agreement.

III. DEFINITIONS

Unless specifically stated in this Agreement, the definition of the terms contained herein shall have the same meaning and effect as defined in 45 CFR Parts 160 and 164.

- A.** Protected Health Information (PHI): For purposes of this Agreement, PHI shall have the same meaning and effect as defined in 45 CFR Parts 160 and 164, limited to the information created, received, maintained or transmitted by Business Associate and/or subcontractors of Business Associate, from, or on behalf of, the Department.
- B.** Security Incident: For purposes of this Agreement, security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system and includes any event resulting in computer systems, networks, or data being viewed, published, manipulated, damaged, destroyed or made inaccessible by an unauthorized activity.

IV. USE AND DISCLOSURE OF PHI

Business Associate shall comply with the provisions of 45 CFR § 164.504(e)(2)(ii). Business Associate shall not use or disclose PHI other than as permitted by this Agreement or by federal or state law. The sale of PHI or any components thereof is prohibited except as provided in 45 CFR § 164.508(a)(4). Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI for any purpose not in conformity with this Agreement and federal or state law. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI Business Associate creates, receives, maintains, or transmits on behalf of Department.

V. USE AND DISCLOSURE OF INFORMATION FOR MANAGEMENT, ADMINISTRATION, AND LEGAL RESPONSIBILITIES

Business Associate is permitted to use and disclose PHI received from Department for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, in accordance with 45 CFR § 164.504(e)(4). Such disclosure is only permissible where required by law, or where Business Associate obtains satisfactory assurances from the

person to whom the PHI is disclosed that:

- A. PHI will be held confidentially;
- B. PHI will be used or further disclosed only as required by law or for the purposes for which it was disclosed to the person; and
- C. The person notifies Business Associate of any instance of which it is aware, or becomes aware, that the confidentiality of PHI has been breached.

VI. DISCLOSURE TO THIRD PARTIES

Business Associate will not divulge, disclose, or communicate PHI to any third party without prior written approval from the Department. Business Associate shall not disclose any PHI to a third party without a written agreement conforming with the requirements of this Agreement. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Department, agrees to the same terms, conditions, and restrictions that apply to Business Associate with respect to PHI. Business Associate must obtain satisfactory assurances from any subcontractor that such PHI will be safeguarded. Business Associate's subcontracts with third parties shall fully comply with the requirements of 45 CFR §164.314(a)(2)(iii).

- A. Access to Information: Business Associate shall make PHI available in accordance with federal and state law, including providing a right of access to persons who are the subjects of the PHI in accordance with 45 CFR §164.524.
- B. Amendment and Incorporation of Amendments: Business Associate shall make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526.

VII. ACCOUNTING FOR DISCLOSURES

Business Associate shall make PHI available as required to provide an accounting of disclosures in accordance with 45 CFR §164.528. Business Associate shall document all disclosures of PHI as needed for the Department to respond to a request for an accounting of disclosures in accordance with 45 CFR §164.528.

VIII. ACCESS TO BOOKS AND RECORDS

Business Associate shall 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 the Department, available to the Secretary of the Department of Health and Human Services ("HHS") or the Secretary's designee for purposes of determining compliance with HHS Privacy Regulations.

IX. REPORTING

Business Associate shall make a good faith effort to identify any use or disclosure of PHI not provided for in this Agreement.

- A. To Department: Business Associate will report to the Department, within ten (10) business days of discovery, any use or disclosure of PHI not provided for in this Contract of which Business

Associate is or becomes aware. Business Associate will report to Department, within twenty-four (24) hours of discovery, any security incident of which Business Associate is or becomes aware. A violation of this paragraph shall be a material violation of this Agreement. Such notice shall include identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during such breach.

- B. To Individuals:** In the case of a breach of PHI discovered by Business Associate, Business Associate shall first notify Department of the pertinent details of the breach and upon prior approval of Department shall notify each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available. Where there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes direct written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, if there are 10 (ten) or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the website of the Business Associate involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether or not the individual's unsecured protected health information is possibly included in the breach. In any case deemed by Business Associate to require urgency because of possible imminent misuse of unsecured PHI, Business Associate may also provide information to individuals by telephone or other means, as appropriate.
- C. To Media:** In the case of a breach of PHI discovered by Business Associate where unsecured PHI of more than 500 (five hundred) persons is reasonably believed to have been, accessed, acquired, used, or disclosed, after prior written review and approval by Department, Business Associate shall provide notice to prominent media outlets serving the State or relevant portion of the State involved.
- D. To Secretary of HHS:** Business Associate shall cooperate with Department to provide notice to the Secretary of HHS of unsecured PHI that has been acquired or disclosed in a breach.
- E. Business Associates Who Are Covered Entities:** In the event of a breach by a Business Associate or subcontractor, and Business Associate is a HIPAA covered entity, Business Associate shall be considered the covered entity for purposes of notification to the Secretary of HHS pursuant to 45 CFR §164.408. Business Associate shall be responsible for filing the notification to the Secretary of HHS and will identify itself as the covered entity in the notice. If the breach was with respect to 500 (five hundred) or more individuals, Business Associate shall provide a copy of the notice to Department, along with Business Associate's breach risk assessment for review at least 15 (fifteen) business days prior to the date required by 45 CFR §164.408(b) for Business Associate to file the notice with the Secretary of HHS. If the breach was with respect to less than 500 (five hundred) individuals, Business Associate shall notify the Secretary of HHS within the notification timeframe imposed by 45 CFR §164.408(c) and shall contemporaneously submit copies of said notifications to Department.

- F. Content of Notices: All notices required under this Agreement shall include the content set forth Section 13402(f), Title XIII of the American Recovery and Reinvestment Act of 2009 and 45 CFR §164.404(c), except that references therein to a “Covered Entity” shall be read as references to Business Associate.
- G. Financial Responsibility: Business Associate shall be responsible for all costs related to the notices required under this Agreement.

X. CONFIDENTIALITY

Parties understand and acknowledge that the information exchanged under this Agreement is confidential and agree:

- A. Information exchanged under this Agreement shall be used and disclosed only for the purposes as defined in this Agreement. Business Associate will only use the information received from Department for the sole purpose stated in Section I (Purpose) of this Agreement.
- B. Information exchanged under this Agreement shall not be used for any purpose not specifically authorized by this Agreement.
- C. Not to store or allow its employees to store any confidential information received on any portable storage media or peripheral devices (e.g., laptops, thumb drives, hard drives, etc.) capable of storing the information.
- D. Information exchanged shall be stored in a place physically and electronically / technically secure from access by unauthorized persons.
- E. To safeguard access to the information exchanged in such a way that unauthorized persons cannot access, view, print, copy or retrieve or otherwise obtain the information by any means.
- F. To take precautions to ensure that only authorized personnel are given access to disclosed information stored in computer systems.
- G. Business Associate shall maintain a listing of all Business Associate employees that have been granted access to the confidential information received under this Agreement with the dates they received initial and annual instructions. Upon request, make such information available to Department contract liaison specified in Section XVI, contract liaisons, their agents, or other federal and state auditors. Through the execution of this Agreement, Business Associate acknowledges that all personnel having access to the disclosed information have been instructed in accordance with this section and Business Associate and its employees will adhere to the confidentiality requirements and terms stated in this Agreement and in accordance with federal and state law.
- H. To take precautions to ensure that only authorized employees are given access to confidential information exchanged under this Agreement.

XI. BREACH OF CONFIDENTIALITY

- A.** The Parties understand and agree to promptly notify one another of any breach of security related to confidential information received from the other Parties in its possession. The Parties further understand and agree they are responsible for complying with Section 501.171, F.S., in the event of a breach of security concerning confidential personal information in its possession, including but not limited to, providing notifications to affected persons. Parties agree to provide any such breach notifications to one another for prior review and approval of the contents of the notice. Department has the right under this Agreement to reasonably determine if Section 501.171, F.S., notifications are necessary, and what type of notification is required under Section 501.171, F.S.; however, in no event shall this section absolve Business Associate from failure to make this determination itself. Business Associate is responsible for all costs incurred in sending breach notifications due to breaches caused by Business Associate, its employees, agents, and/or subcontractors. By execution of this Agreement, Business Associate expressly agrees that they are the Covered Entity as described in this Section.
- B.** Department has the right to immediately terminate this Agreement if Department determines that the safeguards in this Agreement are not adhered to. If Business Associate or any official, employee, agent, or subcontractor thereof, fails to comply with any provision of this Agreement regarding maintaining the confidentiality of the information, this Agreement will be suspended, and further disclosure of information, including any disclosures being processed to Business Associate will be prohibited until Department is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, this Agreement will be cancelled and Business Associate must surrender to Department all confidential information, and any copies thereof, obtained under this Agreement which had not previously been returned to Department.

XII. MITIGATION

Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI in violation of this Agreement.

XIII. INSPECTION OF RECORDS

Business Associate shall permit Department or their designees, to conduct inspections described in this paragraph, or make on-site inspections of records relevant to this Agreement to ensure compliance with 20 CFR 603.5-603.10. Such inspections may take place with or without notice during normal business hours wherever the records are maintained. Business Associate shall ensure a system is maintained that is sufficient to permit an audit of Business Associate's compliance with this Agreement and the requirements specified above. Failure to allow such inspections constitutes a material breach of this Agreement.

XIV. AMENDMENTS AND CHANGES

- A.** This Agreement incorporates all prior negotiations, interpretations, and understandings between Parties, and is the full and complete expression of their agreement. With the exception of contract liaison information specified in Section XVI, any changes, alterations, deletions or additions to the terms set forth in this Agreement must be by written amendment executed by all Parties. Changes

in contract liaisons may be provided without a formalized amendment by providing an email change notification to the other party.

- B. No employee of Parties, other than the authorized individuals who duly execute this Agreement, or their future designee(s), shall have authority to amend or otherwise alter, delete or waive any provision of this Agreement either expressly or by implication. No advice or assistance that may be rendered by such employee(s) shall relieve Parties of any responsibilities set forth herein or add to the obligations of the Parties under this Agreement.

XV. TERMINATION

- A. Any Party may terminate this Agreement without cause by providing a minimum of thirty (30) calendar days written notice thereof to the other Party.
- B. Any Party may terminate this Agreement for cause without prior notice or warning, effective immediately upon the date of receipt by the other Party of an official written notice of termination.
- C. Upon termination of this Contract, Business Associate shall return all PHI that Business Associate still maintains in any form, including any copies or hybrid or merged databases made by Business Associate; or with prior written approval of Department, PHI may be destroyed by Business Associate after its use. If PHI is destroyed pursuant to Department's prior written approval, Business Associate must provide a written confirmation of such destruction to Department. If return or destruction of the PHI is determined not feasible by Department, Business Associate agrees to protect the PHI and treat it as strictly confidential.

XVI. CONTRACT LIAISONS

- A. Department designates as its liaison for all issues relating to this Agreement, Shandra McGlohon, whose title is Enterprise Systems Manager, Bureau of Information Technology, who may be contacted by telephone at (850) 414-2317, or by email at mcglohonsa@elderaffairs.org and whose address is Building 4040 Esplanade Way, Tallahassee, Florida 32399.
- B. Business Associate designates as its liaison for all issues relating to this Agreement, _____, who may be contacted by telephone at _____ or by email at _____.
- C. Liaisons or Contract Managers may be changed at any time, with notice given in writing to the other Party.

XVII. PUBLIC RECORDS AND RETENTION

By execution of this agreement, Business Associate agrees to all provisions of Chapter 119, F.S., and any other applicable law, and shall:

- A. Keep and maintain public records required by the Department to perform the contracted services.
- B. Upon request from the Department's custodian of public records, provide the Department a copy of the requested records or allow the records to be inspected or copied within a reasonable time

at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

- C. Ensure that public records that are exempt, or confidential and exempt, from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Business Associate does not transfer the records to the Department.
- D. Upon completion of this Agreement, the Business Associate will either transfer, at no cost to the Department, all public records in possession of the Business Associate, or will keep and maintain public records required by the Department. If the Business Associate transfers all public records to the Department upon completion of the contract, Business Associate shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the Business Associate keeps and maintains public records upon completion of the agreement, the Business Associate shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.
- E. The Department may unilaterally cancel this Agreement, notwithstanding any other provisions of this Agreement, for refusal by the Business Associate to comply with this Section by not allowing public access to all documents, papers, letters, or other material made or received by the Business Associate in conjunction with this Agreement, unless the records are exempt, or confidential and exempt, from Section 24(a) of Article I of the State Constitution and Section 119.07(1), F.S.

IF THE BUSINESS ASSOCIATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BUSINESS ASSOCIATE’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Public Records Coordinator
Florida Department of Elder Affairs
4040 Esplanade Way
Tallahassee, Florida 32399
850-414-2342
doeapublicrecords@elderaffairs.org**

IN WITNESS, WHEREOF, the Parties agree to the terms and conditions as set forth in this Agreement, and upon placing their signatures to this Agreement as duly authorized have hereby caused this nine (9) page Agreement to be executed.

<Contractor Name>	FLORIDA DEPARTMENT OF ELDER AFFAIRS
SIGNED:	SIGNED:
	RICHARD PRUDOM
TITLE:	DEPUTY SECRETARY/CHIEF OF STAFF
DATE:	DATE:
FEID:	