

BUSINESS ASSOCIATES AGREEMENT

29-000

Combined HIPAA Privacy Business Associate Agreement and Confidentiality Agreement and HIPAA Security Rule Addendum and HI-TECH Act Compliance Agreement and the Florida Information Protection Act of 2014

This Agreement is entered into between the State of Florida, Florida Department of Health (“Covered Entity”), and _____ (“Business Associate”). The parties have entered into this Agreement for the purpose of satisfying the Business Associate contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Security Rule, codified at 45 Code of Federal Regulations (“C.F.R.”) Part 164, Subparts A and C; 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. This Agreement corresponds to the following contract #, purchase order, or memorandum of agreement 29-482.

1.0 Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Notwithstanding the above, "Covered Entity" shall mean the State of Florida Department of Health. “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee; and “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Part I: Privacy Provisions

2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information (“PHI”) other than as permitted or required by Sections 3.0 and 5.0 of this Agreement, or as required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information as provided for by this Agreement.
- (c) Business Associate agrees to take reasonable measures to protect and secure data in electronic form containing personal information as defined by §501.171, Florida Statutes.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access, or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (e) Business Associate agrees to report to Covered Entity any use, access, or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

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- (g) Business Associate agrees to make available protected health information in a designated record set to the Covered Entity within 10 days of a request, or directly to an Individual or the Individual's designee in a prompt and reasonable manner consistent with the time frames established in the Covered Entity's Information Security and Privacy Policy, in order to meet the requirements under 45 CFR 164.524.
- (h) Business Associate agrees to ensure no more than the reasonable cost-based fee, permitted under 42 CFR 164.524, is charged to an individual requesting copies of their protected health information.
- (i) Business Associate agrees to make any Amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (j) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information 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 in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (k) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (l) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (m) Business Associate agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions on its behalf, will comply with the EDI Standards.
- (n) Business Associate agrees to determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR 164.502(b) and 514(d).
- (o) Business Associate agrees to comply with all aspects of §501.171, Florida Statutes.

3.0 Permitted or Required Uses and Disclosures by Business Associate General Use and Disclosure.

- (a) Except as expressly permitted in writing by Department of Health, Business Associate may use Protected Health Information only as necessary to perform the services set forth in the contract or purchase order, as referenced herein. Business Associate shall not disclose information to any third party without the expressed written consent of the Covered Entity.
- (b) Business Associate may use or disclose protected health information as required by law.
- (c) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity.
- (d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services relating to health care operations of the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

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- (e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).

4.0 Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.

- (a) Covered Entity shall provide Business Associate with its notice of privacy practices developed in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

5.0 Confidentiality under State Law.

- (a) In addition to the HIPAA privacy requirements and the data security requirements of §501.171, Florida Statutes, Business Associate agrees to observe the confidentiality requirements of Chapter 381, Florida Statutes and any other Florida Statute relating to the confidentiality of information provided under this agreement.
- (b) Receipt of a Subpoena. If Business Associate is served with subpoena requiring the production of Department of Health records or information, Business Associate shall immediately contact the Department of Health, Office of the General Counsel, (850) 245-4005. A subpoena is an official summons issued by a court or an administrative tribunal, which requires the recipient to do one or more of the following:
 1. Appear at a deposition to give sworn testimony, and may also require that certain records be brought to be examined as evidence.
 2. Appear at a hearing or trial to give evidence as a witness, and may also require that certain records be brought to be examined as evidence.
 3. Furnish certain records for examination, by mail or by hand-delivery.
- (c) Employees and Agents. Business Associate acknowledges that the confidentiality requirements herein apply to all its employees, agents and representatives. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, against Department of Health, including costs and attorneys' fees, resulting from the breach of the confidentiality requirements of this Agreement.

6.0 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7.0 Term and Termination.

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(a) Term.

The Term of this Agreement shall be coterminous with the underlying contract or purchase order, giving rise to this Agreement.

(b) Termination for Cause.

Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by the Covered Entity.

(c) Effect of Termination.

1. Within sixty (60) days after termination of the Agreement for any reason, or within such other time period as mutually agreed upon in writing by the parties, Business Associate shall return to Covered Entity or destroy all Protected Health Information maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover, and shall return or destroy with such time period, any Protected Health Information in the possession of its subcontractors or agents.
2. Within fifteen (15) days after termination of the Agreement for any reason, Business Associate shall notify Covered Entity in writing as to whether Business Associate elects to return or destroy such Protected Health Information. If Business Associate elects to destroy such Protected Health Information, it shall certify to Covered Entity in writing when such Protected Health Information has been destroyed. If any subcontractors or agents of the Business Associate elect to destroy the Protected Health Information, Business Associate will require such subcontractors or agents to certify to Business Associate and to Covered Entity in writing when such Protected Health Information has been destroyed. If it is not feasible for Business Associate to return or destroy any of said Protected Health Information, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the Protected Health Information and the specific reasons for such determination.
3. Business Associate further agrees to extend any and all protections, limitations, and restrictions set forth in this Agreement to Business Associate's use or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of Protected Health Information not feasible.
4. If it is not feasible for Business Associate to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractors' or agents' uses or disclosures of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.

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Part II: Breaches and Security Incidents

8.0 Privacy or Security Breach.

Business Associate will report to Covered Entity's Privacy Officer or the Covered Entity's contract manager within 2 business days after the discovery, any unauthorized access, use, disclosure of Covered Entity's protected health Information not permitted by the Business Associates Agreement along with any breach of Covered Entity's unsecured protected health information. Business Associate will treat the breach as being discovered in accordance with 45 CFR §164.410. If a delay is requested by a law enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying the Covered Entity for the applicable time period. Business Associates report will at a minimum:

- (a) Identify the nature of the breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any breach and the date of discovery of the breach;
- (b) Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or breach (such as whether name, social security number, date of birth, home address, account number or other information was disclosed/accessed) on an individual basis;
- (c) Identify who made the non-permitted use or disclosure and who received it;
- (d) Identify what corrective action or mitigation Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further breaches;
- (e) Identify what steps the individuals who were subject to a breach should take to protect themselves;
- (f) Provide such other information, including a written report, as Covered Entity may reasonably request.

8.1 Security of Electronic Protected Health Information.

WHEREAS, Business Associate and Department of Health agree to also address herein the applicable requirements of the Security Rule, codified at 45 Code of Federal Regulations ("C.F.R.") Part 164, Subparts A and C, issued pursuant to the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA-AS"), and the Florida Information Protection Act (FIPA) §501.171, Florida Statutes, so that the Covered Entity may meet compliance obligations under HIPAA-AS and FIPA the parties agree:

- (a) Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information (as defined in 45 C.F.R. § 160.103) and Personal Information (as defined in §501.171, Florida Statutes) that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity consistent with the Security Rule.

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- (b) Reporting Security Incidents. Business Associate will report to Covered Entity any successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or unauthorized access of data in an electronic form containing Personal Information as defined in §501.171, Florida Statute, or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware.

8.2 Corrective Action:

- (a) Business Associate agrees to take prompt corrective action and follow all provisions required in state and federal law to notify all individuals reasonably believed to be potentially affected by the breach.
- (b) Cure: Business Associate agrees to take prompt corrective action to cure any security deficiencies.

Part III

9.0 Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, Personal Information, Standard Transactions, the security of Health Information, or other aspects of HIPAA-AS or FIPA applicable or the publication of any decision of a court of the United States or any 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, either party may, by written notice to the other party, amend this Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such Amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an Amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.
- (c) Survival. The respective rights and obligations of Business Associate under Section 7.0 of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the confidentiality requirements of the State of Florida.
- (e) No third party beneficiary. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida to the extent not preempted by the Privacy Rules or other applicable federal law.

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- (g) Venue. The venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.
- (h) Indemnification and performance guarantees. Business Associate shall indemnify, defend, and save harmless the State of Florida and Individuals covered for any financial loss as a result of claims brought by third parties and which are caused by the failure of Business Associate, its officers, directors or agents to comply with the terms of this Agreement or for penalties imposed by the HHS Office of Civil Rights for any violations of the Federal Privacy Rule caused by the Business Associate. Additionally, Business Associate shall indemnify the State of Florida for any time and expenses it may incur from breach notifications that are necessary under either §501.171, Florida Statute or the HIPAA Breach Notification Rule, 45 CFR §§ 164.400-414, which are caused by the failure of Business Associate, its officers, directors or agents to comply with the terms of this Agreement.
- (i) Assignment. Business Associate shall not assign either its obligations or benefits under this Agreement without the expressed written consent of the Covered Entity, which shall be at the sole discretion of the Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.
- (j) E-Verify. Effective January 1, 2021, Business Associate is required to use the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all employees used by the Business Associate under this Agreement, pursuant to section 448.095, Florida Statutes. Also, the Landlord must include in related subcontracts, if authorized under this Agreement, a requirement that subcontractors performing work or providing services pursuant to this Agreement use the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of services under this Agreement. The subcontractor must provide the Covered Entity with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Business Associate must maintain a copy of such affidavit for the duration of the Agreement. If the Department has a good faith belief that a subcontractor knowingly violated section 448.095(1), Florida Statutes, and notifies the Covered Entity of such, but the Business Associate otherwise complied with this statute, the Business Associate must immediately terminate the subcontract with the subcontractor.

For: **DEPARTMENT OF HEALTH
HILLSBOROUGH COUNTY HEALTH DEPARTMENT**

By: _____

Douglas A. Holt, M. D.

Title: Director

Date: _____

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For:

By: _____

Title: _____

Date: _____