

Business associate agreement

This Business Associate Agreement (this “Agreement”) is entered into by and between [Legal Name of Entity] (“[Legal Name of Dentist Office]” and/or “Covered Entity”) and _____ (“[Legal Name of Entity]” and/or “Business Associate”) this ____ day of _____ 20____.

RECITALS

A. As intended by the parties’ business agreement, [Legal Name of Dentist Office] is deemed a “Covered Entity” and [Legal Name of Entity] is deemed a “Business Associate” subject to the requirements of the HIPAA Rules (as defined below).

B. Business Associate may perform functions or activities on behalf of Covered Entity, or provide certain services to Covered Entity that involves access to protected health information. Business Associate may create, receive, maintain, or transmit protected health information on behalf of Covered Entity. For example, Business Associate may receive an individual’s dental status update from Covered Entity.

C. The parties wish to set forth their respective duties to safeguard the protected health information of individuals as required by the HIPAA Rules.

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. Definitions

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules (as defined below): Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms shall have the meanings set forth below:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CRF 160.103, and in reference to the party to this agreement, shall mean [Legal Name of Entity].

- b. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Legal Name of Dentist Office].
- c. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- a. Not Use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware; unless otherwise agreed, Business Associate shall handle Breach notifications to Individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of Covered Entity.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Covered Entity agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- e. Make available Protected Health Information in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- g. Maintain and make available the information required to provide an accounting of Disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- h. To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and

- i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

- a. Business Associate may only Use or disclose Protected Health Information as necessary to perform the services set forth in the Business/Service Agreement between the parties dated [insert date].
- b. Business Associate may Use or disclose Protected Health Information as Required by Law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.
- d. 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 Covered Entity, except for the specific Uses and Disclosures set forth in (e), (f), and (g) below.
- e. Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- f. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- g. Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity.

4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- a. Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices under 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's Use or Disclosure of Protected Health Information.

- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

5. 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 Subpart E of 45 CFR Part 164 if done by Covered Entity, except if Business Associate will Use or disclose Protected Health Information for Data Aggregation or management and administration and legal responsibilities.

6. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the date set forth above, and shall terminate on [insert termination date or event] or on the date a party terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. Termination for Cause. Business Associate authorizes termination of this Agreement, 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 20 days after receipt of notice.
- c. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - 1. Retain only that Protected Health Information which is necessary for it to continue its proper management and administration or to carry out its legal responsibilities;
 - 2. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the party still maintains in any form;
 - 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

4. Not Use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 3, paragraphs (e) and (f) above, which applied prior to termination; and
 5. Return to Covered Entity or destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. Survival. The obligations of the Business Associate under this Section shall survive the termination of this Agreement.

7. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- c. Survival. The respective rights and obligations of the parties under Section 6 of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- e. Facsimile/email Signatures. Facsimile or electronic mail transmission of this signed original document, and retransmission of any signed facsimile or electronic mail transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile or electronic mail transmitted signatures by signing an original document.
- f. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.
- g. Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- h. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the United States of America and the state of **[insert name of state]** without regard to conflict-of-laws principles – provided however, if federal law and **[insert name of state]** law are in conflict, federal law shall control.

- i. Attorney Fees. If any arbitration, suit, action, or appeal is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees and expert costs incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.
- j. Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be brought against any of the parties in [insert name of local trial court] of the State of [insert name of state] or, subject to applicable jurisdictional requirements, in the United States District Court for the District of [insert name], and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
- k. Severability. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.
- l. Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

In WITNESS WHEREOF, the undersigned have executed this Business Associate Agreement as of the date first set forth above.

[Covered Entity]

[Business Associate]

By _____

By _____

Title _____

Title _____