

Arkansas Department of Health Business Associate Agreement

This Business Associate Agreement is made effective on the ____ day of _____, 20____ by and between the **Arkansas Department of Health** with offices located at 4815 West Markham Street, Little Rock, AR 72205, herein after referred to as “Covered Entity” and the **[ADD Business Associate NAME]** located at **[Business Associate ADDRESS]** hereinafter referred to as “Business Associate” (collectively referred to as “Parties”).

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Security and Privacy Rule”); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the “Health Information Technology for Economic and Clinical Health” (“HITECH”) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the “HIPAA Security and Privacy Rule” are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations); and

WHEREAS, the Parties wish to enter into or have entered into a service agreement or contractual arrangement whereby Business Associate will provide certain services to the Covered Entity and whereby Covered Entity may provide Business Associate with Protected Health Information (“PHI”) or Business Associate may create or receive PHI on behalf of Covered Entity (the agreement evidencing such arrangement is entitled **[NAME of Principal Agreement]** dated ____ day of _____, 20____ and is hereinafter referred to as “Principal Agreement”); and

THEREFORE, in consideration of the Parties’ continuing obligations under the Principal Agreement, compliance with the HIPAA Security and Privacy Rule, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

1. Definitions

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or 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 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. “Protected Health Information” includes without limitation “Electronic Protected Health Information” as defined below.

The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

The term "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.

2. Permitted Uses and Disclosures by the Business Associate

Except to the extent that a use or disclosure would violate the HIPAA Security and Privacy Rule if such use or disclosure were done by the Covered Entity, Business Associate may use or disclose PHI to the extent reasonably necessary and in compliance with 45 CFR § 164.502(b) regarding the minimum necessary requirements:

- a. to perform functions, activities, or services for, or on behalf of, Covered Entity as set forth in the Principal Agreement;
- b. for the proper management and administration of the Business Associate, to carry out the legal responsibilities of the Business Associate, and disclosures Required by Law;
- c. to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1); and
- d. to provide Data Aggregation services to Covered Entity, if requested by Covered Entity, and as permitted by 42 CFR 164.504(e)(2)(i)(B).

3. Obligation of the Business Associate

- a. Business Associate agrees to not use or further disclose PHI other than as permitted by the Principal Agreement, this Agreement, or as Required by Law.
- b. Business Associate agrees to implement administrative, physical, and technical safeguards that (i) prevent use or disclosure of the PHI other than as provided for by this Agreement and (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- c. Business Associate shall ensure that any agent, including a subcontractor, to whom Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect it. Business Associate agrees, at the request of Covered Entity, to employ technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals that are consistent with National Institute of Standards and Technologies (NIST) Special Publications.
- d. Business Associate agrees to ensure that any agent of Business Associate, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to this Agreement to Business Associate with respect to such information.
- e. Business Associate agrees to report to Covered Entity any use or disclosure of the information not provided for by this Agreement of which it becomes aware.
- f. Business Associate agrees to, following the discovery of a Breach of Unsecured PHI, as defined in

the HIPAA Security and Privacy Rule, notify the Covered Entity of such Breach pursuant to the terms of 45 CFR §164.410 and shall cooperate in the covered entity's breach analysis procedures, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate.

- 1) Business Associate will provide such notification to Covered Entity without unreasonable delay and in no event later than five (5) calendar days after discovery of the breach. Such notification will contain the elements required in 45 CFR § 164.410.
 - 2) For breaches determined to be caused by the Business Associate, where such breaches require notifications to patients or consumers, the cost of such breach notifications shall be borne by the Business Associate.
 - 3) The Parties agree that Business Associate is not an Agent of Covered Entity.
- g. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach of Unsecured PHI or other use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- h. To the extent Business Associate maintains any PHI in a Designated Record Set, and such information is not also in the possession of Covered Entity, Business Associate agrees to provide access to, at the request of Covered Entity, and in the time and manner required under the HIPAA Regulations, such PHI to Covered Entity or as directed by Covered Entity, to an individual authorized by state or federal law to receive the information, in order to meet the requirements under 45 C.F.R. § 164.524.
- i. To the extent Business Associate maintains any PHI in a Designated Record Set, Business Associate agrees to make any amendments to the PHI that Covered Entity has agreed to pursuant to 45 C.F.R. § 164.526, upon notification by Covered Entity to Business Associate that such information requires amendment.
- j. Business Associate agrees to make available to Covered Entity Protected Health Information in response to a request for an accounting of disclosures required by 45 C.F.R § 164.528. Business Associate also agrees to document its disclosures of the PHI, if any, 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 pursuant to 45 C.F.R § 164.528. In the event of such a request, Business Associate agrees to provide to Covered Entity or to the requesting party, in the time and manner required by 45 C.F.R. § 164.528, an accounting of any such disclosures.
- k. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of the United States Department of Health and Human Services or his/her designee solely for the purposes of determining Covered Entity's compliance with the HIPAA Regulations.
4. Obligation of the Covered Entity
- a. Covered Entity agrees to notify Business Associate of any limitations in its Notice of Privacy

Practices to the extent that Covered Entity determines that such limitation may affect Business Associate's use or disclosure of PHI.

- b. Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by the patient to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- d. Covered Entity agrees to notify Business Associate of any amendments made or required to be made to PHI in the possession of Business Associate, pursuant to 45 C.F.R. § 164.526.

5. Termination

- a. Except for termination for cause as set forth below, the Term of this Business Associate Agreement shall be effective as of the effective date stated herein and shall continue for each year thereafter until the Parties agree otherwise in writing, signed by persons authorized to execute such agreements, and as long as the Business Associate ceases to receive, use, create, disclose or maintain any PHI on behalf of Covered Entity. For such termination to be effective, such PHI must have been destroyed by Business Associate or returned to Covered Entity in accordance with the terms of Paragraph 5(c).
- b. Upon Covered Entity's knowledge of a material breach by Business Associate of the terms of this Agreement, Covered Entity shall have the right to either:
 - 1) terminate immediately the Principal Agreement and this Agreement; or
 - 2) provide an opportunity for Business Associate to cure the breach or end the violation within the time specified by Covered Entity, and if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may terminate the Principal Agreement and this Agreement.
- c. Except as provided in this Agreement, upon termination of this Business Associate Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, including any copies of such PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
- d. In the event the Business Associate determines that returning or destroying the Protected Health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such Protected Health Information.

6. Miscellaneous

Incorporation into Agreement. The Parties agree that this Business Associate Agreement is incorporated into and made part of the Principal Agreement.

No Third-Party Beneficiary. Nothing in this Business Associate Agreement shall confer upon any person, other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities.

Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time for the parties to comply with the requirements of the HIPAA Regulations. All other amendments to this Business Associate Agreement agreed upon by the parties must be in writing and signed by both parties.

Governing Law. This Agreement shall be governed by the laws of the State of Arkansas.

Waiver. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Business Associate Agreement or the right of either Party thereafter to enforce each and every such provision.

Notices. Notices permitted or required to be given hereunder shall be provided to:

COVERED ENTITY	BUSINESS ASSOCIATE
ADH Privacy Officer	
4815 West Markham Street Slot 31	
Little Rock, AR. 72205	
Email: ADHPrivacyOfficer@arkansas.gov	
Telephone: (501) 537-1290	

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the Effective Date.

Signature of Business Associate Authorized Representative

Printed Name of Business Associate Authorized Representative

Title

Signature of ADH Program Authorized Representative

Printed Name of ADH Program Authorized Representative

Title

Return a signed copy of this Agreement to:

ADH Privacy Officer
4815 W. Markham St. Slot 31
Little Rock, AR 72205
Email: ADH.PrivacyOfficer@arkansas.gov