

Sample HIPAA Business Associate Agreement
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Prepared by

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Underlying Service Agreement. The following Sample HIPAA Business Associate Agreement refers to a “Service Agreement” (i.e., a contract) between the transcription Vendor and the Covered Entity, and states that the transcriptionist is permitted to use or disclose protected health information as necessary to fulfill his or her obligations under that Service Agreement. Thus, if using this model, it is necessary to have a Service Agreement or, at minimum, a side document that establishes the transcriptionist's general performance obligations vis-à-vis the covered entity. [Note: AAMT has undertaken to develop a model Service Agreement, which will become available later this year.]

About the Shaded Portions. The lightly shaded (or yellow) portions of the agreement are those which the HIPAA privacy rule explicitly or implicitly requires to be in the agreement. In many cases, the exact language is not mandated and may be modified, but the concepts embodied in these sections are non-negotiable and must appear in a business associate agreement.

There are two darkly shaded (green) portions [sections 1.2 (a) and (b) and the latter part of section 4.5]. These reflect concepts that the regulation expressly states MAY be in a business associate agreement, and we recommend inclusion of these provisions (even though they are not mandated).

Disclaimer. *This document is being made available to AAMT Practitioner members solely as an illustration and example of a business associate agreement between a HIPAA covered entity and a transcriptionist (or transcription service). No representations or warranties are made by AAMT as to the appropriateness, accuracy, or completeness of the provisions included in this model document. This document and the provisions contained herein may not be suitable for every arrangement between a transcriptionist (or transcription service) and a covered entity. Moreover, this model document does not reflect any state privacy requirements, which in some cases may be more stringent than the requirements under the HIPAA privacy rule. Consequently, in the event that an AAMT member desires to utilize this sample, in whole or in part, when contracting with a covered entity, review of the document by legal counsel is strongly advised.*

SAMPLE HIPAA BUSINESS ASSOCIATE AGREEMENT

This business associate Agreement (“Agreement”), effective as of _____ (“Effective Date”), is entered into by and between _____, a company having its principal place of business at _____ (“Vendor”), and _____, with an address at _____ (“Covered Entity”) (each a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, Vendor is entrusted with confidential patient information for use in providing transcription and related services to Covered Entity; and

WHEREAS, both Parties wish to meet their obligations under the standards for privacy of individually identifiable health information (the “privacy rule”) published by the US. Department of Health and Human Services (“HHS”) at 45 C.F.R. parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and

WHEREAS, both Parties wish to set forth the terms and conditions pursuant to which confidential patient information created or received by Vendor in the performance of services for or on behalf of Covered Entity (“protected health information”) will be handled between themselves and with third parties; and

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Services. Vendor provides transcription and related services (“Services”) that involve the use and/or disclosure of protected health information. These Services are provided to Covered Entity under an agreement (“Service Agreement”) that specifies the Services to be provided by Vendor. Except as otherwise specified herein, Vendor may make any and all uses of protected health information received from or created on behalf of Covered Entity which are necessary to perform Vendor’s obligations under the Service Agreement; provided, however, that all other uses not authorized by this Agreement, the Service Agreement, or other written instructions from Covered Entity, are prohibited. Moreover, Vendor may disclose protected health information for the purposes authorized by this Agreement only (i) to its employees, subcontractors and agents in accordance with Section 2.1(e) below, (ii) as directed by Covered Entity, or (iii) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 1.2(b) below.

1.2 Business Activities of Vendor. Unless otherwise limited herein, Vendor may:

- (a) use the protected health information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Vendor; and
- (b) disclose the protected health information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Vendor, provided that (i) the disclosures are “required by law,” as defined in 45 C.F.R. § 164.501, or (ii) Vendor has received from the third party written assurances regarding its confidential handling of such protected health information as required under 45 C.F.R. § 164.504(e)(4).

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

- 2.1. Responsibilities of Vendor. With regard to its use and/or disclosure of protected health information, Vendor agrees to:
- (a) use and/or disclose the protected health information only as permitted or required by this Agreement or as otherwise required by law;
 - (b) use commercially reasonable efforts to maintain the security of the protected health information and to prevent the unauthorized use and/or disclosure of such protected health information;
 - (c) report to Covered Entity, in writing, any use and/or disclosure of the protected health information that is not permitted or required by this Agreement of which Vendor becomes aware within five (5) days of Vendor's discovery of such unauthorized use and/or disclosure;
 - (d) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of protected health information that Vendor reports to Covered Entity;
 - (e) require all of its subcontractors and agents that receive, use, or have access to protected health information under this Agreement to agree to adhere to the same restrictions and conditions on the use and/or disclosure of protected health information that apply to Vendor pursuant to this Agreement and to provide adequate safeguards against improper use or disclosure;
 - (f) at the request of, and in the time and manner designated by Covered Entity, provide access to the protected health information to Covered Entity, or the individual to whom such protected health information relates, or his or her authorized representative, in order to satisfy a request by such individual under HIPAA;
 - (g) at the request of, and in the time and manner designated by Covered Entity, make any amendment(s) to the protected health information that Covered Entity directs;
 - (h) upon written request of Covered Entity, make available within ten (10) days such information in Vendor's possession which is necessary for Covered Entity to make an accounting of disclosures of an individual's protected health information;
 - (i) forward to Covered Entity within two (2) business days of receipt any request by a patient of Covered Entity for access to or an accounting of disclosures of protected health information directly from Vendor;
 - (j) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy rule; and
 - (k) subject to Section 4.5 below, return to Covered Entity or destroy, within [____] days of the termination of this Agreement, the protected health information in its possession and retain no copies (which for purposes of this Agreement shall mean segregable databases, files, or recording media identifiable to Covered Entity that are used by Vendor in providing Services on behalf of Covered Entity).
- 2.2. Responsibilities of Covered Entity. With regard to the use and/or disclosure of protected health information by Vendor, Covered Entity agrees:

- (a) to obtain any patient consent or authorization that may be required by the Privacy rule or applicable state law prior to furnishing Vendor protected health information pertaining to an individual;
- (b) that it will not furnish Vendor protected health information that violates any restrictions on use and/or disclosure as provided for in 45 C.F.R. § 164.522 and agreed to by Covered Entity;
- (c) to notify Vendor, in writing, of any protected health information in Vendor's possession that Covered Entity seeks to make available to a patient pursuant to 45 C.F.R. § 164.524 and agree with Vendor as to the time, manner, and form in which Vendor shall provide such access; and
- (d) to notify Vendor, in writing, of any amendment(s) to the protected health information in the possession of Vendor that Covered Entity believes are necessary because of its belief that the protected health information that is the subject of the amendment(s) has been or could be relied upon by Vendor or others to the detriment of the individual who is the subject of the protected health information.

3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1. Each Party represents and warrants to the other Party:

- (a) that all of its employees, agents, representatives and members of its workforce whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the applicable terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all applicable provisions of this Agreement;
- (b) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement; and
- (c) that it is prepared to comply with those provisions of this Agreement required by the privacy rule on or before April 14, 2003.

4. TERM AND TERMINATION

- 4.1. Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this Agreement shall survive the expiration or termination of this Agreement in accordance with Section 5.4 herein.
- 4.2. Termination by Covered Entity. Covered Entity may immediately terminate this Agreement if Covered Entity determines that Vendor has breached a material term of this Agreement. Alternatively, Covered Entity may choose to: (i) provide Vendor with [___] days written notice of the existence of an alleged material breach; and (ii) afford Vendor an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within [___] days, Vendor must cure said breach to the satisfaction of Covered Entity within [___] days. Failure to cure in the manner set forth in this Section 4.2 shall be grounds for the immediate termination of this Agreement.
- 4.3. Termination by Vendor. Vendor may immediately terminate this Agreement if Vendor determines that Covered Entity has breached a material term of this Agreement. Alternatively, Vendor may choose to: (i) provide Covered Entity with [___] days written notice of the existence of an alleged material breach; and (ii) afford Covered Entity an opportunity to cure said alleged material breach upon mutually agreeable terms.

Nonetheless, in the event that mutually agreeable terms cannot be achieved within [____] days, Covered Entity must cure said breach to the satisfaction of Vendor within [____] days. Failure to cure in the manner set forth in this Section 4.3 shall be grounds for the immediate termination of this Agreement.

4.4. Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Service Agreement between Covered Entity and Vendor.

4.5. Effect of Termination. Upon the termination of this Agreement pursuant to this Section 4, Vendor agrees to return or destroy within [____] days all protected health information identifiable to Covered Entity, including such information in the possession of Vendor's subcontractors, if it is feasible to do so. If return or destruction of the protected health information is not feasible, Vendor will notify Covered Entity in writing. Said notification shall include: (i) a statement that Vendor has determined that it is unfeasible to return or destroy the protected health information in its possession; and (ii) the specific reasons for such determination. Vendor further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Vendor's use and/or disclosure of any protected health information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the protected health information unfeasible.

5. MISCELLANEOUS

5.1. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the Parties' compliance with federal and/or state health information confidentiality laws and regulations, as well as the Parties' obligations under the business associate provisions of 45 C.F.R. parts 160 and 164. This Agreement supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the Parties hereto relating to the Parties' compliance with federal and/or state health information confidentiality laws and regulations and the Parties' health information confidentiality and security obligations under 45 C.F.R. parts 160 through 164.

5.2. Change of Law. The Parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this Agreement to give effect to any amendment to any provision of HIPAA, or its implementing regulations set forth at 45 C.F.R. parts 160 through 164, or any new privacy or security requirements imposed under state or federal law, which materially alters either Party's or both Parties' obligations under this Agreement; provided, however, that if the Parties are unable to agree on mutually acceptable amendment(s) within thirty (30) days of the relevant change of law, either party may terminate this Agreement consistent with sections 4.5 and 5.4.

5.3. Construction of Terms. The terms of this Agreement shall be construed in light of any interpretation and/or guidance on HIPAA and the privacy rule issued by HHS from time to time.

5.4. Survival. Section 6 and this Section 5.4 shall survive termination of this Agreement. The respective rights and obligations of Vendor and Covered Entity under the provisions of Sections 2.1, 2.2, and 4.5, solely with respect to protected health information Vendor retains in accordance with Section 4.5 because it is not feasible to return or destroy such protected health information, shall survive termination of this Agreement for so long as such information is retained.

5.5. Amendment; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the

Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.

5.6. Notices. Any notices to be given hereunder to a Party shall be made via US Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Vendor, to:

If to Covered Entity, to:

Attention: _____

Attention: _____

Fax: _____

Fax: _____

Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above.

5.7 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.8 Disputes. If any controversy, dispute, or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

6. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING FROM ITS PERFORMANCE OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

7. DEFINITIONS

7.1. Regulatory citations in this Agreement are to the United States Code of Federal Regulations ("C.F.R."), as interpreted and amended from time to time by HHS, for so long as such regulations are in effect.

7.2. Unless otherwise specified in this Agreement, all terms not otherwise defined shall have the meaning established for purposes of 45 C.F.R. parts 160 through 164, as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this business associate Agreement to be duly executed in its name and on its behalf effective as of _____.

(COVERED ENTITY)

(VENDOR)

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____