

Sample Business Associate Agreement (BAA) -
Dominion Solutions LLC

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Introduction

A “business associate” is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information (PHI). A “business associate” also is a subcontractor that creates, receives, maintains, or transmits PHI on behalf of another business associate.

The HIPAA Rules generally require that covered entities and business associates enter into contracts with their business associates to ensure that the business associates will appropriately safeguard PHI. This sample language is provided by HHS and is intended to assist covered entities and business associates in creating compliant agreements. It is sample language only and should be reviewed and customized by legal counsel for your situation.

Definitions

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: 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.

Specific definitions (examples):

- **Business Associate.** The party performing services that involve access to PHI.
 - **Covered Entity.** The party that is a HIPAA-covered entity.
 - **HIPAA Rules.** The Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
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Obligations and Activities of Business Associate

Business Associate agrees to:

1. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
2. Use appropriate safeguards, and comply with the HIPAA Security Rule (45 CFR Part 164 subpart C) with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement.
3. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.

4. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate.
5. Make PHI available to the Covered Entity (or individual as directed) as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524 (access to records).
6. Make any amendments to PHI in a designated record set as directed by the Covered Entity pursuant to 45 CFR 164.526.
7. Maintain and make available the information required to provide an accounting of disclosures to satisfy 45 CFR 164.528.
8. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.
9. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

Business Associate may only use or disclose PHI:

- As necessary to perform the services set forth in the underlying service agreement; and
- As required by law.

Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures (or as otherwise specified in this Agreement).

Optional provisions include allowing the Business Associate to use PHI for its proper management and administration, to provide data aggregation services, or to disclose PHI to third parties for business administration provided reasonable assurances are obtained.

Provisions for Covered Entity to Inform Business Associate

Optional provisions where Covered Entity agrees to notify Business Associate of:

- Limitations in the Notice of Privacy Practices that may affect Business Associate's use or disclosure of PHI.
- Changes in, or revocation of, permission by an Individual to use or disclose PHI.
- Any restriction on the use or disclosure of PHI that Covered Entity has agreed to under 45 CFR 164.522.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in a manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as permitted by this Agreement (e.g., data aggregation or management/admin use by Business Associate).

Term and Termination

Term. This Agreement shall be effective as of the effective date and shall terminate on the termination date or event specified in the Agreement.

Termination for Cause. Covered Entity may terminate this Agreement if Covered Entity determines Business Associate has violated a material term of the Agreement and the Business Associate has not cured the breach within a specified time (optional).

Obligations Upon Termination. Upon termination of this Agreement:

- Option 1 (preferred for most covered entities): Business Associate shall return to Covered Entity (or, if agreed, destroy) all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity that the Business Associate still maintains. Business Associate shall retain no copies of the PHI.
- Option 2 (if retention is necessary): Business Associate may retain only that PHI necessary for proper management and administration or to carry out legal responsibilities, continuing to safeguard the retained PHI and returning/destroying remaining PHI not required to be retained.

Survival. The obligations of Business Associate under this Section shall survive termination of this Agreement.

Miscellaneous (Optional)

- **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
 - **Amendment.** The Parties agree to take such action as necessary to amend this Agreement for compliance with HIPAA Rules and applicable law.
 - **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
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How to Use This Template

1. Replace bracketed instructions (e.g., party names, effective date) with your specifics.
 2. Work with legal counsel to adapt optional provisions and to ensure the Agreement satisfies both state contract law and the practical needs of the parties.
 3. Consider adding stricter breach notification timelines, responsibilities for notification content, and any practical procedures for fulfilling individual rights requests if Business Associate will act on Covered Entity's behalf.
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Attribution and Source

This sample was adapted from the HHS Model Business Associate Agreement Provisions (January 25, 2013):

- <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>

Dominion Solutions LLC provides this sample for informational purposes. Use of this sample does not substitute for legal advice.

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