

## BUSINESS ASSOCIATE AGREEMENT CHECKLIST

PROVISION	CONTENT	SOURCE	YES/NO
<b><u>REQUIRED PROVISIONS</u></b>			
<u>Use and Disclosure</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will not use or disclose Protected Health Information (“PHI”) other than as permitted or as required by law</li> </ul>	<i>45 C.F.R. 164.504 (e)(2)(ii)(A)</i>	
<u>Minimum Necessary Requirement</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will disclose only the minimum PHI necessary to perform or fulfill a specific function required or permitted by the Agreement</li> </ul>	<i>45 C.F.R. 164.502(b); 164.514(d)</i>	
<u>Safeguards</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will use appropriate safeguards to maintain the security of the PHI and to prevent unauthorized uses and/or disclosures</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(B)</i>	
<u>Mitigation</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI in violation of the Agreement</li> </ul>	<i>45 C.F.R. 164.530(f)</i>	
<u>Reporting</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will report to Covered Entity any unauthorized use or disclosure of PHI of which it becomes aware, including breaches of unsecured PHI and any security incident of which it becomes aware</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(C)</i>	
<u>Subcontractors</u>	<ul style="list-style-type: none"> <li>▪ If permitted by law to provide PHI to an agent/subcontractor, Business Associate will ensure such agent/subcontractor agrees in writing to the same restrictions and conditions which apply to the Business Associate</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(D) (But must be permissible by 42 C.F.R. Part 2)</i>	
<u>Right of Access</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will provide access to PHI to the Covered Entity or to the Individual who is the subject of the PHI</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(E); 164.524</i>	
<u>Right of Amendment</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will make any amendments to PHI at the direction or request of the Covered Entity</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(F); 164.526</i>	
<u>Right to an Accounting of Disclosures</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will document disclosures of PHI as required for Covered Entity to respond to an Individual request for an accounting of disclosures</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(G); 164.528</i>	

<u>Books and Records</u>	<ul style="list-style-type: none"> <li>▪ Business Associate will make books, records, internal practices, policies and procedures available to the Secretary of DHHS</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(I)</i>	
<u>Permitted Uses and Disclosures</u>	<ul style="list-style-type: none"> <li>▪ Business Associate can use or disclose PHI for the purpose of [Insert purpose(s)], if such use or disclosure would not violate HIPAA or 42 C.F.R. Part 2 or the minimum necessary policies and procedures of the Covered Entity</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(A)</i>	
<u>Permissible Requests by Covered Entity</u>	<ul style="list-style-type: none"> <li>▪ Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA or 42 C.F.R. Part 2</li> </ul>	<i>45 C.F.R. 164.504(e)</i>	
<u>Termination</u>	<ul style="list-style-type: none"> <li>• Upon material breach by Business Associate, Covered Entity may terminate immediately</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(iii)</i>	
<u>Effect of Termination</u>	<ul style="list-style-type: none"> <li>▪ Business Associate must return PHI to Covered Entity or destroy PHI</li> </ul>	<i>45 C.F.R. 164.504(e)(2)(ii)(J)</i>	
<b><u>REQUIRED FOR OSOs</u></b>			
<u>Acknowledgment</u>	<ul style="list-style-type: none"> <li>▪ Qualified Service Organization acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from the Covered Entity, it is fully bound by 42 C.F.R. Part 2</li> </ul>	<i>42 C.F.R. Part 2.11</i>	
<u>Judicial Proceedings</u>	<ul style="list-style-type: none"> <li>• Qualified Service Organization will resist in judicial proceedings or any efforts to obtain PHI except as provided in 42 C.F.R. Part 2</li> </ul>	<i>42 C.F.R. Part 2.12(d)</i>	
<b><u>RECOMMENDED PROVISIONS NOT REQUIRED BY HIPAA</u></b>			
<u>Books and Records</u>	<ul style="list-style-type: none"> <li>• Business Associate will make books, records, internal practices, policies and procedures available to the Covered Entity</li> </ul>		
<u>Business Activities</u>	<ul style="list-style-type: none"> <li>▪ Business Associate may use and/or disclose PHI for the proper management and administration of its business, except as otherwise limited by the Agreement or 42 C.F.R. Part 2</li> <li>▪ Business Associate may use and/or disclose PHI to carry out its legal responsibilities, except as otherwise limited by the Agreement or 42 C.F.R. Part 2</li> </ul>	<i>Must be permissible under 42 C.F.R. Part 2</i>	
<u>Reporting Violations of Law</u>	<ul style="list-style-type: none"> <li>▪ Business Associate may use PHI to report violations of law as permitted by HIPAA and 42 C.F.R. Part 2</li> </ul>		

<u>Individual Authorization</u>	<ul style="list-style-type: none"> <li>▪ Covered Entity will notify Business Associate of any changes in or revocation of, authorization by an Individual to use or disclose PHI</li> </ul>		
<u>Notice of Restrictions</u>	<ul style="list-style-type: none"> <li>▪ Covered Entity will notify Business Associate of any Individual requests for restrictions to the use or disclosure of PHI</li> </ul>		
<u>Confidentiality Obligations</u>	<ul style="list-style-type: none"> <li>▪ Business Associate acknowledges it is fully bound by HIPAA and 42 C.F.R. Part 2</li> </ul>		
<u>Insurance</u>	<ul style="list-style-type: none"> <li>• Covered Entity may require Business Associate to obtain and maintain insurance coverage against improper uses and disclosures</li> <li>• Recommend requiring Business Associate to name Covered Entity as an additional insured</li> </ul>		
<u>Termination</u>	<ul style="list-style-type: none"> <li>▪ Term may be until all PHI is returned to Covered Entity or destroyed</li> <li>▪ Upon breach by Business Associate, Covered Entity may provide an opportunity for Business Associate to cure breach</li> <li>▪ If neither cure nor termination is feasible, Covered Entity may report breach to the Secretary of DHHS</li> </ul>		
<u>Effect of Termination</u>	<ul style="list-style-type: none"> <li>• If return or destruction is infeasible, Business Associate will extend protections of the Agreement to the PHI</li> </ul>		
<u>Preemption</u>	<ul style="list-style-type: none"> <li>▪ Mandatory provisions of HIPAA preempt provisions of the Agreement</li> <li>▪ Provisions of the Agreement not mandated by HIPAA but nonetheless permitted by HIPAA will control</li> <li>▪ In the event of inconsistencies between HIPAA and 42 C.F.R. Part 2, the more restrictive rule will control</li> </ul>		
<u>Compliance with Laws</u>	<ul style="list-style-type: none"> <li>▪ Parties will comply with any and all federal, state and local laws pertaining to client confidentiality including, but not limited to, state mental health and developmental disability confidentiality law, state and federal drug and alcohol confidentiality laws and state AIDS/HIV confidentiality laws</li> </ul>		
<u>Indemnification</u>	<ul style="list-style-type: none"> <li>▪ Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees,</li> </ul>		

	<p>expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement by Business Associate.</p> <ul style="list-style-type: none"><li>▪ Warning: Before including an indemnification provision, check with your insurance carriers, especially if a mutual indemnification provision is included. It is not a required provision under HIPAA and often adds negotiating time to what could otherwise be a standard agreement.</li></ul>		
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