



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

CYNTHIA B. JONES
DIRECTOR

SUITE 1300
600 EAST BROAD ST
RICHMOND, VA 23219

**MASTER INTERAGENCY / BUSINESS ASSOCIATE AGREEMENT;
PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION**

GENERAL CONDITIONS

THIS BUSINESS ASSOCIATE AGREEMENT is made as of the date subscribed below by the Department of Medical Assistance Services (herein referred to as "Covered Entity"), with an office at 600 East Broad Street, Richmond, Virginia, 23219, and _____, (here in referred to as "Business Associate"), with an office at _____.

This BUSINESS ASSOCIATE AGREEMENT (herein referred to as the "Agreement") constitutes a non-exclusive agreement between the Covered Entity, which administers Medical Assistance, and the Business Associate named above.

The Covered Entity and Business Associate, as defined in 45 CFR § 160.103 of the Final HIPAA Privacy Rule, have entered into this Business Associate Agreement to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Final Privacy regulation requirements for such an Agreement, as well as our duty to protect the confidentiality and integrity of Protected Health Information (PHI) required by law, Department policy, professional ethics, and accreditation requirements. Parties signing this Agreement shall fully comply with the provisions of the Regulations implementing HIPAA.

This Agreement will have, at a minimum, the following attachments: Chain of Trust Attachment, Data Security Plan Attachment, and Scope-of-Work Attachment.

DMAS and Business Associate desire to facilitate the provision of or transfer of PHI in agreed formats and to assure that such transactions comply with relevant laws and regulations.

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

I. Definitions.

As used in this contract, the terms below will have the following meanings:

- a. Business Associate: A person or organization that performs a function or activity on behalf of the Covered Entity, but is not part of the Covered Entity's workforce. A business associate can also be a covered entity in its own right.

- b. Covered Entity: Includes 1) All health care providers who transmit any health information electronically in connection with standard financial or administrative transactions, 2) All health plans, 3) All health care clearinghouses. Covered entities are accountable for PHI. Centers for Medicaid and Medicare Services (CMS) (formerly HCFA), Medicare + Choice and Medicaid State plans are also covered entities.
- c. Provider: Any entity eligible to be enrolled and receive reimbursement through Covered Entity for any Medicaid-covered services.
- d. MMIS: The Medicaid Management Information System, the computer system that is used to maintain recipient, provider, and claims data for administration of the Medicaid program. This system is currently managed under a contract with First Health Services Corp., which serves as Covered Entity's fiscal agent.
- e. Protected Health Information (PHI): Individually identifiable information, including demographics, which relates to a person's health, health care, or payment for health care as specified in 45 CFR § 160.103 of the Final HIPAA Privacy Rule. HIPAA protects individually identifiable health information transmitted or maintained in any form.
- f. Unsecured Protected Health Information (UPHI): Protected Health Information that is not rendered unusable, unreadable, or undecipherable to unauthorized individuals through the use of technology.

II. Terms.

The terms of this Agreement are outlined in the Scope-of-Work Attachment. The Scope-of-Work will define and delineate DMAS and Business Associate's responsibilities under the conditions of this Agreement.

III. Notices.

Written notices to the Covered Entity should be sent through general mail to:

Contact: _____
 Department of Medical Assistance Services
 600 East Broad Street
 Richmond, Virginia 23219

IV. Special Provisions to General Conditions.

1. Use and Disclosure of PHI.

1.1 Use of PHI. Business Associate shall not use PHI otherwise than as expressly permitted by this Agreement, or as required by law. However, Business Associate may use PHI for purposes of managing its internal business processes relating to its functions under this Agreement. Business Associate shall be permitted to, use and disclose PHI provided by Covered Entity as follows:

- (i) To the following persons: _____
- (ii) For the following stated purposes _____.

1.2 Disclosure to Third Parties. Business Associate shall ensure that any agents and subcontractors to whom it provides PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) agree in writing to the same restrictions, terms, and conditions relating to PHI that apply to Business Associate in this Contract. Covered Entity shall have the option to review and approve all such written agreements between Business Associate and its agents and subcontractors prior to their effectiveness.

1.3 Disclosure and Confidentiality. Business Associate must have a confidentiality agreement in place with individuals of its workforce who have access to PHI. A sample Authorized Workforce Confidentiality Agreement is included as Exhibit B. Issuing and maintaining these confidentiality agreements will be the responsibility of the Business Associate. Covered Entity shall have the option to inspect the maintenance of said confidentiality agreements.

1.4 Disclosure to workforce. Business Associate shall not disclose PHI to any member of its workforce except to those persons who have authorized access to the information, who have received privacy training in PHI, and who have signed an agreement to hold the information in confidence.

2. Safeguards

2.1 Safeguards. Business Associate shall implement and maintain appropriate safeguards to prevent the use and disclosure of PHI, other than as provided in this Contract. A description of such safeguards in the form of a Business Associate Data Security Plan submitted by the Business Associate (see Exhibit A) shall be attached to this Contract and shall be considered a part hereof. Covered Entity's approval of such safeguards and any of Business Associate's measures to update or add safeguards during the Contract shall be required. Upon reasonable request, Business Associate shall give Covered Entity access for inspection and copying to Business Associate's facilities used for the maintenance or processing of PHI, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Business Associate's compliance with this Agreement.

3. Accounting of Disclosures.

3.1 Accounting of Disclosures. Business Associate shall maintain an ongoing log of the details relating to any disclosures of PHI it makes (including, but not limited to, the date made, the name of the person or organization receiving the PHI, the recipient's address, if known, a description of the PHI disclosed, and the reason for the disclosure). Business Associate shall, within thirty (30) days of Covered Entity's request, make such log available to Covered Entity, as needed for Covered Entity to provide a proper accounting of disclosures to its patients.

3.2 Disclosure to U.S. Department of Health and Human Services (DHHS). Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) available to the Secretary of DHHS or its designee for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy Regulations issued pursuant thereto. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Contract.

4. Reporting

4.1 Reporting Violations. Business Associate shall report to Covered Entity within thirty (30) days of discovery, any use or disclosure of PHI made in violation of this Contract or any law. Business Associate shall implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Contract or the HIPAA privacy regulations. Business Associate shall, as requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this Contract.

Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder:

Except as otherwise limited in this contract, contractor may use or disclose protected health information (PHI) to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in this contract. In performance of contract services, Contractor agrees to:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this contract;
- Report to the Covered Entity any use or disclosure of PHI not provided for by this Contract of which it becomes aware;
- Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the HIPAA Security Rule, 45 C.F.R. Parts 160, 162, and 164 and the American Recovery and Reinvestment Act (P.L. 111-5) when effective;
- Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it;
- Report to the Covered Entity any security incident of which it becomes aware.
- Contractor shall notify Covered Entity of a breach of unsecured PHI on the first day on which such breach is known by Contractor or an employee, officer or agent of Contractor other than the person committing the breach, or as soon as possible following the first day on which Contractor or an employee, officer or agent of Contractor other than the person committing the breach should have known by exercising reasonable diligence of such breach. Notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Contractor to have been, accessed, acquired, used or disclosed during the breach. Contractor shall also provide Covered Entity with any other available information at the time Contractor makes notification to Covered Entity or promptly thereafter as information becomes available. Such additional information shall include (i) a brief description of what happened, including the date of the breach; (ii) a description of the types of unsecured PHI that were involved in the breach; (iii) any steps the Contractor believes individuals should take to protect themselves from potential harm resulting from the breach; and (iv) a brief description of what Contractor is doing to investigate the breach, mitigate harm to individuals, and protect against any future breaches.

For purposes of this paragraph, unsecured PHI means PHI which is not encrypted or destroyed. Breach means the acquisition, access, use or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule or this contract which compromises the security or privacy of the PHI by posing a significant risk of financial, reputational, or other harm to the individual.

- Impose the same requirements and restrictions contained in this contract on its subcontractors and agents to whom contractor provides PHI received from, or created or received by a contractor on behalf of the Covered Entity;
- Provide access to PHI contained in a designated record set to the Covered Entity, in the time and manner designated by the Covered Entity, or at the request of the Covered Entity, to an individual in order to meet the requirements of 45 CFR 164.524.
- Make available PHI for amendment and incorporate any amendments to PHI in its records at the request of the Covered Entity;
- Document and provide to Covered Entity information relating to disclosures of PHI as required for the Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;

- Make its internal practices, books, and records relating to use and disclosure of PHI received from, or created or received by a contractor on behalf of Covered Entity, available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with 45 CFR Parts 160 and 164, subparts A and E;
- At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by a Contractor on behalf of the Covered Entity that the contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

Contractor may use or disclose PHI received from the Covered Entity, if necessary, to carry out its legal responsibilities and for the proper management and administration of its business. Contractor may disclose PHI for such purposes if the disclosure is required by law, or if contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially, that it will be used or further disclosed only as required by law of for the purpose for which it was disclosed to the person, and that person will notify the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Access and Amendment to PHI

5.1 Right of Access. Business Associate shall make an individual's PHI available to Covered Entity within thirty (30) days of an individual's request for such information as notified by Covered Entity.

5.2 Right of Amendment. Business Associate shall make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within thirty (30) days of notification by Covered Entity.

6. Termination

6.1 Termination. Covered Entity may immediately terminate this Contract if Covered Entity determines that Business Associate has violated a material term of this Contract. This Agreement shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement before the effective date of termination. Within thirty (30) days of expiration or earlier termination of this Contract, Business Associate shall return or destroy all PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form and retain no copies of such PHI. Business Associate shall provide a written certification that all such PHI has been returned or destroyed, whichever is deemed appropriate by the Covered Entity. If such return or destruction is infeasible, Business Associate shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Contract shall survive with respect to such PHI.

7. Amendment

7.1 Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to the Business Associate, amend this Agreement in such manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate this Agreement by written notice to the other.

EACH PARTY has caused this Agreement to be properly executed on its behalf as of the date below.

For: Dept. of Medical Assistance Services

For: _____

BY: _____
Cynthia B. Jones, Director
Dept. of Medical Assistance Services

BY: _____

DATE

DATE