

(SAMPLE)

Business Associate Agreement

I. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this Agreement are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

(a) *Business Associate.* "Business Associate" shall mean (*XYZ Transcription Services, ABC Claims Auditing Services, LMN Computer Records Resources, PQR Medical Records Microfilming Inc., etc.*)

(b) *Covered Entity.* "Covered Entity" shall mean the *County of _____* as a "hybrid entity" that has designated its specific covered component(s) within the County which are subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

(c) *Designated Record Set.* "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

(d) *Individual.* "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(e) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

(f) *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by the Business Associate from or on behalf of the Covered Entity.

(g) *Required by Law.* "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.

(h) *Secretary.* "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

II. Obligations and Activities of Business Associate

- (a) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner designed by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information 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 in accordance with Section 164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section (i) of this Agreement, to permit Covered Entity to respond to a request by an

Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

III. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purpose *(of transcribing dictated progress notes / assisting Covered Entity in implementing computerized medical records systems/microfilming / boxing and storing Covered Entity's dated medical charts / defending Covered Entity in a medical malpractice action / etc. etc. etc.)* if such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

IV. Obligations of Covered Entity

(a) Covered Entity shall make available, if requested, to Business Associate the notice(s) of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as changes to such notice.

(b) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of the Protected Health Information that is provided to Business Associate.

(c) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

V. Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of *(April 14, 2003)* ongoing and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section;

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation, or terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

(c) *Effect of Termination.*

(1) Except as provided below in paragraph (2), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information

received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of the Protected Health Information is not feasible, 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 not feasible, for so long as Business Associate maintains such Protected Health Information.

VI. Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(c) *Survival.* The respective rights and obligations of Business Associate under section V. (c) of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

Signed:

By: _____
Covered Entity
County of _____

By: _____
Business Associate
(XYZ Transcription Services)

Date: _____

Date: _____

