

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into as of [Month DD, YYYY] by and between [Physicians DataTrust Inc.] having its principal place of business at [161 Thunder Drive, Suite 212, Vista, CA 92083] ("Company") and [Vendor Name] ("Business Associate").

Whereas, the parties are entering into this agreement to comply with the requirements of the HIPAA Act of 1996 as amended by the *Health Information Technology for Economic and Clinical Health (HITECH) Act*.

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:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Vendor Name].

(b) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the HIPAA Privacy Rule or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to Company any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

Breach notification obligations of business associate must be presented to Company as soon as possible, or within 24 hours' timeframe (business associate must report a potential breach to Company) and Company will determine at that time if the business associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of Company. Even unsuccessful attempts of unauthorized access to PHI must be reported to Company within a reasonable timeframe.

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Make available protected health information in a designated record set to Company or as necessary to satisfy Company's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by Company pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Company's obligations under 45 CFR 164.526;

(g) Maintain and make available within 10 business days, the information required to provide an accounting of disclosures to Company as necessary to satisfy Company's obligations under 45 CFR 164.528;

(h) To the extent the business associate is to carry out one or more of Company's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Company in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to our compliance department for purposes of determining compliance with the HIPAA Rules.

Safeguards Against Misuse of Information

Business associate shall comply with all the applicable requirements of HIPAA and the HITECH ACT relating to Business associate and shall implement appropriate safeguards to prevent the use or disclosure of PHI in any manner other than pursuant to the terms and conditions of this Agreement. Business associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Company.

As required by §13402(a) of the HITECH Act, Business associate shall comply with the administrative, physical, and technical safeguards and standards set out in 45 C. F. R, §164.308, §164.312, and with the policies and procedures and documentation requirements set out in the 45 C.F.R. §164.316. On and after the effective date of final regulations issued by the Secretary requiring compliance with the 45 C.F.R. §164.314, Business Associate shall comply with the organizational requirements set forth at 45 C.F.R. §

Permitted Uses and Disclosures by Business Associate

(a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in Service Agreement.

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with Company's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate HIPAA regulations, HITECH regulations, or Subpart E of 45 CFR Part 164 if done by Company.

(e) Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

(f) Business associate may provide data aggregation services relating to the health care operations of Company.

Provisions for Company to Inform Business Associate of Privacy Practices and Restrictions

(a) Company shall notify business associate of any limitation(s) in the notice of privacy practices of Company under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) Company shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) Company shall notify business associate of any restriction on the use or disclosure of protected health information that Company has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

Agreements with Third Parties

Business associate shall ensure that any agent or subcontractor agrees to be bound by the same restrictions and conditions that apply to the Business associate and that reasonable safeguards are in place to protect PHI.

Permissible Requests by Company

Company shall not request Business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Company.

Access to PHI

In the event business associate maintains PHI in a designated record set business associate shall within five business days of receipt of a request from Company provide to Company PHI in the Business associate's possession that is required for Company to respond to an individual's request for access to PHI made pursuant to 45 CFR § 164.524 or other applicable laws. Business associate shall comply with and shall assist Company in complying with requirements for providing access to certain information in electronic format if Company or Business associate uses or maintains an electronic health record with respect to individual may not approve or deny access to the PHI requested rather Business associate may not approve requested rather Business associate shall, within two business days, forward such requests to Company.

Availability of Books and Records

Business associate hereby agrees to make its applicable internal practices, books and records including policies and procedures, available to the compliance officer for purposes of determining compliance with the HIPAA Privacy and Security Rules and HITECH. The practices, books, and records subject to this section are those that relate to the use and disclosure of PHI that is created by the Business associate on behalf of Company, received Business associate from Company, or received by the Business associate from a third party on behalf of Company.

Limitation of Liability

No exculpation or limitation on Business associate's liability set forth in any of the business associate agreement shall apply to any liability of Business associate's as a result of Business associate's breach of this Agreement.

Term and Termination

Term. The Term of this Agreement shall be effective as of [Month DD, YYYY], and shall be an effective BAA until all of the PHI provided by company to business associate or created or received by business associate on behalf of company is destroyed or returned to company or if it is infeasible to return or destroy such PHI, or on the date Company terminates for cause as authorized in this Section, whichever is sooner. Protections are extended to such information in accordance with the termination provisions in this section.

Business Associate agrees to maintain for a minimum of six (6) years from the end of the contract period any documentation pertaining to this agreement and any underlying service agreements, including but not limited to policies, procedures, and a written record of any action, activity, or assessment conducted.

Termination for Cause

If company determines that supplier has committed in material breach of this Agreement or any applicable Business associate agreement pertaining to the use or disclosure of PHI, Company shall either:

1. Provide an opportunity for Business associate to cure the breach or end the violation, and terminate this Agreement and any applicable business associate agreement if the Business associate does not cure the breach and/or the violation within the time specified by Company; or
2. Immediately terminate this Agreement and any applicable agreements if Company determines cure is not possible.

Obligations of Business Associate Upon Termination.

The business associate is to return or destroy all protected health information upon termination of the agreement.

Upon termination of this Agreement for any reason, business associate shall return to Company or, if agreed to by Company, destroy all protected health information received from Company, or created, maintained, or received by business associate on behalf of Company, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from Company, or created, maintained, or received by business associate on behalf of Company, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Company or, if agreed to by Company, destroy the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with §t C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at which applied prior to termination; and
5. Return to Company or, if agreed to by Company, destroy the protected health information retained by Business associate when it is no longer needed by Business

associate for its proper management and administration or to carry out its legal responsibilities.

Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(d) Indemnification. The parties agree to indemnify, defend, and hold harmless each other, their subsidiaries and affiliates and their respective directors, officers, employees and agent, from and against any loss, claims, damages, judgments, attorney's fees expenses, and liabilities, of any kind or nature for which either party may become liable resulting from any claim legal action, or proceeding arising directly or indirectly out of either party's violation of the terms of this Agreement.

In addition to any other rights available to Company under this Agreement and/or any Business Associate Agreements, Business associate shall indemnify and hold Company harmless from and against all damages, costs, fines, and penalties directly or indirectly arising from Business Associates breach of applicable state or federal privacy and data security laws and regulations including HIPAA and the HITECH Act and/or related to any breach directly or indirectly attributable to business associates including its employees, officers, directors, agents, and or subcontractors.

Regulatory References

A reference to this agreement to a section in the HIPAA privacy and security rules or HITECH Act shall mean the section as in a fact or as amended.

IN WITNESS WHEREOF:

[PHYSICIANS DATATRUST] ("COMPANY")

[VENDOR NAME] ("BUSINESS ASSOCIATE")

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title