# [LCSW Name and Address]

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between [Name of Entity] (“Covered Entity”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Business Associate”), effective as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”).

**RECITALS**

WHEREAS, the parties contemplate one (1) or more arrangements (collectively, the “Arrangement”) whereby Business Associate provides services to Covered Entity, and Business Associate creates, receives, maintains, transmits, or has access to Protected Health Information in order to provide those services;

WHEREAS, Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and regulations promulgated thereunder, including the Standards for Privacy and for Security of Individually Identifiable Health Information codified at 45 Code of Federal Regulations (“CFR”) Parts 160, 162, and 164 (“Privacy Regulations” and “Security Regulations”);

WHEREAS, the Privacy Regulations and Security Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure or use of Protected Health Information by or to Business Associate if such a contract is not in place;

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**DEFINITIONS**

“Designated Record Set” shall mean a group of records maintained by or for Covered Entity that is (a) the medical records and billing records about individuals maintained by or for Covered Entity; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used, in whole or in part, by or for Covered Entity to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.

“Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of, access to, or divulging in any other manner, of Protected Health Information outside Business Associate’s internal operations, or to persons other than Business Associate’s own employees engaged in internal operations.

“Protected Health Information” or “PHI” means information, including demographic information, that (a) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); (c) is received by Business Associate from or on behalf of Covered Entity, or is created, received, maintained, or transmitted by Business Associate, or is made accessible to Business Associate by Covered Entity; and (d) is transmitted or maintained in any form or medium.

“Electronic Protected Health Information” or “EPHI” means the subset of PHI that is transmitted by electronic media or maintained in electronic media.

“Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of an information system.

“Use” or “Uses” mean, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within Business Associate’s internal operations.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those in 45 CFR 160, 162, and 164.

**OBLIGATIONS OF BUSINESS ASSOCIATE**

Permitted Uses and Disclosures of PHI. Except as otherwise limited in this Agreement, Business Associate may Use and Disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the written documents describing the Arrangement, provided that such Use or Disclosure of PHI would not violate the Privacy Regulations or Security Regulations if done by Covered Entity. Business Associate agrees not to Use or Disclose PHI other than as permitted or required by this Agreement, or as required by law.

Adequate Safeguards for PHI. Business Associate warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Agreement or as required by law.

Adequate Safeguards for EPHI. Business Associate warrants that it shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate further warrants that it shall comply with the HIPAA Security Regulations, where applicable, with respect to EPHI to prevent the use or disclosure of EPHI other than as provided for by this Agreement.

Reporting Non-Permitted Use, Disclosure, or Breach.

Business Associate shall immediately in writing notify Covered Entity of any Use or Disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware.

Business Associate shall report to Covered Entity any Security Incident of which it becomes aware as follows: (a) reports of successful unauthorized access shall be made immediately; and (b) reports of attempted unauthorized access shall be made in a reasonable time and manner considering the nature of the information to be reported.

Business Associate shall report to Covered Entity a breach of Unsecured Protected Health Information without unreasonable delay, but not later than five (5) days, following Business Associate’s discovery of such breach, where such report will include the identification of each individual whose Unsecured PHI has been or is reasonably believed to have been breached and other information as requested by Covered Entity. For purposes of the foregoing obligation, “breach” shall mean the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Regulations which compromises the security or privacy of such information, as further defined in 45 CFR Section 164.402.

Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity’s compliance with the Privacy Regulations. Business Associate shall immediately in writing notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

Access to and Amendment of PHI. Within ten (10) days of receiving a request from Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall: (a) make the PHI specified by Covered Entity available to the individual(s) identified by Covered Entity as being entitled to access and copy that PHI, and (b) make PHI available to Covered Entity for amendment purposes and incorporating such amendments into the PHI. Business Associate shall provide such access and incorporate such amendments within the time and in the manner specified by Covered Entity.

Accounting of Disclosures. In accordance with 45 CFR 164.528, and Section 13405(c) of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, codified at 42 U.S.C. § 17932, Business Associate agrees to: (a) document Disclosures of PHI and information related to such Disclosures; (b) provide such documentation to Covered Entity in a time and manner designated by Covered Entity; and (c) permit Covered Entity to respond to a request by an individual for an accounting of Disclosures of PHI. Within ten (10) days of receiving a request from Covered Entity, Business Associate shall provide to Covered Entity an accounting, as referenced in 45 CFR 164.528, of each Disclosure of PHI made by Business Associate or its employees, agents, representatives, or subcontractors.

Any accounting provided by Business Associate under this Section 0 shall include: (a) the date of Disclosure; (b) the name, and address, if known, of the entity or person who received the PHI; (c) a brief description of Disclosed PHI; and (d) a brief statement of the purpose of Disclosure. For each Disclosure that could require an accounting under this Section 0, Business Associate shall document the information specified in (a) through (d), above, and shall securely retain this documentation for six (6) years from the date of Disclosure.

Use of Subcontractors and Agents. Business Associate may disclose PHI to a subcontractor, and may allow the subcontractor to create, receive, maintain, or transmit PHI on its behalf, provided by Business Associate obtains satisfactory assurances that the subcontractor will appropriately safeguard the information. Without limiting the generality of the foregoing, Business Associate shall require each of its subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate to execute a written agreement obligating the subcontractor to comply with all terms of this Agreement and to agree to the same restrictions and conditions that apply to Business Associate with respect to the PHI.

Business Associate shall not be in compliance with the Privacy Regulations if Business Associate knew of a pattern of activity or practice of a subcontractor that constituted a material breach or violation of the subcontractor’s obligation under the written agreement with Business Associate, unless Business Associate took reasonable steps to cure the breach or end the violation, and if such steps were unsuccessful, terminate the contract, if feasible.

Agreement to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, and to promptly communicate to Covered Entity any actions taken pursuant to this paragraph.

Business Associate Practices, Policies and Procedures. Business Associate’s privacy and security policies and practices shall meet current standards set by applicable state and federal law for the protection of PHI including, without limitation, user authentication, data encryption, monitoring and recording of database access, internal privacy standards and a compliance plan, all designed to provide assurances that the requirements of this Agreement are met.

Compliance with Covered Entity Obligations. To the extent Business Associate carries out Covered Entity’s obligations under the Privacy Regulations and Security Regulations, Business Associate shall comply with the requirements of such regulations that apply to Covered Entity in the performance of such obligations.

HITECH Act Compliance. Business Associate will comply with the requirements of the HITECH Act, codified at 42 U.S.C. §§ 17921–17954, which are applicable to business associates, and will comply with all regulations issued by the Department of Health and Human Services (HHS) to implement these referenced statutes, as of the date by which business associates are required to comply with such referenced statutes and HHS regulations. Further, Business Associate will comply with Section 13402 of the HITECH Act, codified at 42 U.S.C. § 17932, and will comply with all regulations issued by HHS to implement this statute, as of the date by which business associates are required to comply with such referenced statutes and HHS regulations. Business Associate agrees to indemnify Covered Entity for any and all costs and expenses incurred by Covered Entity which are directly or indirectly caused by Business Associate’s failure to comply with the HITECH Act and the HITECH Act’s implementing regulations including, without limitation, penalties imposed and expenses incurred related to notifying individuals of a breach caused by Business Associate or its subcontractors in compliance with the HIPAA breach notification requirements set forth at 42 U.S.C. §17932..

**ADDITIONAL PERMITTED USES**

Except as otherwise limited in this Agreement or the Arrangement, Business Associate may use PHI for the following additional purposes:

Use of Information for Management, Administration and Legal Responsibilities. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

Disclosure of Information for Management, Administration and Legal Responsibilities. Business Associate may Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate if the Disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially and Used or further Disclosed only as required by law or for the purpose of which it was Disclosed, and the person notifies Business Associate of any instances of which it is aware where confidentiality of the information has been breached.

**TERM AND TERMINATION**

Term and Termination. This Agreement shall commence as of the Effective Date and shall continue in effect unless and until terminated by Covered Entity under this Section 0. Covered Entity may terminate this Agreement, without cause or penalty, on five (5) days’ prior written notice to Business Associate. In addition, this Agreement may be terminated by Covered Entity immediately and without penalty upon written notice by Covered Entity to Business Associate if Covered Entity determines, in its sole discretion, that Business Associate has violated any material term of this Agreement. Business Associate’s obligations under Sections 0, 0, 0, 0, 0, 0, 0, and 0 of this Agreement shall survive the termination of this Agreement.

Disposition of PHI upon Termination. Upon termination of this Agreement, Business Associate shall either return or destroy, in Covered Entity’s sole discretion and in accordance with any instructions by Covered Entity, all PHI maintained in any form by Business Associate or its agents and subcontractors, and shall retain no copies of such PHI unless directed to do so by Covered Entity. However, if Covered Entity determines that neither return nor destruction of PHI is feasible, Business Associate may retain PHI provided that Business Associate: (a) continues to comply with the provisions of this Agreement for as long as it retains PHI, and (b) limits further Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI infeasible.

**GENERAL TERMS**

No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

Relationship to Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of any other agreement between the parties, the provisions of this Agreement shall control.

Indemnification. Business Associate will indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of, or in connection with (a) any misrepresentation, breach, or non-fulfillment of any undertaking on the part of Business Associate under this Agreement; (b) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization, arising out of or in any way connected with Business Associate’s obligations under this Agreement; and (c) a breach of unsecured PHI caused by Business Associate or its subcontractors or agents. Without limiting the generality of the foregoing, Business Associate agrees to indemnify Covered Entity for any and all costs and expenses incurred as a result or arising directly or indirectly out of the Covered Entity’s compliance with the HIPAA breach notification requirements set forth at 42 U.S.C. § 17932.

Insurance. Business Associate shall obtain and maintain during the term of this Agreement and at any time in which it retains PHI, privacy and security liability insurance covering common law claims, breach notification expenses, data theft, and coverage related to the violation of state or federal information privacy and security laws or regulations. The policy limits for such coverage shall not be less than $1,000,000 per claim, and $5,000,000 in the aggregate. Such insurance shall name the Covered Entity as an additional named insured. A copy of such policy or a certificate evidencing the policy shall be provided to the Covered Entity upon written request.

Data Ownership. Business Associate acknowledges and agrees that Covered Entity owns all rights, interests, and title in and to its data, including all PHI, and title shall remain vested in Covered Entity at all times.

Legal Compliance; Amendment. The parties hereto shall comply with applicable laws and regulations governing their relationship, including, without limitation, the Privacy Regulations, the Security Regulations, and any other federal or state laws or regulations governing the privacy, confidentiality, or security of patient health information, including without limitation, the Washington Uniform Healthcare Information Act, RCW Ch. 70.02. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect. Business Associate shall comply with applicable state and federal statutes and regulations as of the date by which business associates are required to comply with applicable statutes and regulations. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Regulations, the Security Regulations, the HITECH Act, RCW ch. 70.02 and other federal or state laws or regulations governing the privacy, confidentiality or security of PHI. Upon request by Covered Entity, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of the Privacy Regulations, Security Regulations, or other applicable laws. Covered Entity may terminate this Agreement upon thirty (30) days written notice to Business Associate in the event: (a) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (b) Business Associate does not enter into an amendment of this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of the Privacy Regulations, Security Regulations, or other applicable laws.

Independent Contractor. Business Associate and Covered Entity are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. No acts performed or words spoken by either party with respect to any third party shall be binding upon the other. Any and all obligations incurred by either party in connection with the performance of any of its obligations hereunder shall be solely at that party's own risk, and the other shall not be obligated in any way therefore except as specifically provided for herein to the contrary. Each party agrees that it shall not represent itself as the agent or legal representative of the other for any purpose whatsoever.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the Effective Date.

|  |  |
| --- | --- |
| **Business Associate:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Covered Entity:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |