

ATTACHMENT D

ADH BAA

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**ARKANSAS DEPARTMENT OF HEALTH
BUSINESS ASSOCIATE AGREEMENT
EXHIBIT - - - - -**

1. Definitions

(a) **Business Associate.** Business Associate shall mean:

Business Associate Name (Contractor Name)	
Business Associate Address	
Nature of Contract	

- (b) **Covered Entity.** "Covered Entity" shall mean the Arkansas Department of Health (ADH).
- (c) **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (d) **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (e) **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (f) **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- (g) **Secretary.** "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his/her designee.

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2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to 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 the Protected Health Information other than as provided for by this Agreement.
- (c) To the extent allowable by law, the business associate agrees to indemnify and hold the ADH and its employees harmless for any harmful effect known to the business associate, concerning the 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 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.
- (e) Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (f) Business Associate agrees it will not share, disseminate, send, copy, distribute, disclose or otherwise make available to any agent, subcontractor or third party Protected Health Information received from the Arkansas Department of Health without the express written consent of the Arkansas Department of Health
- (g) 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.
- (h) Business Associate agrees to provide make available, at the request of Covered Entity, and in the time and manner acceptable to the 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 45 CFR 164.524.
- (i) 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 pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.526.
- (j) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, 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 to the Secretary, in a time and manner acceptable to ADH or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rules.
- (k) 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 45 CFR 164.528.
- (l) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner acceptable to ADH, 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 45 CFR 164.528.
- (m) Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity pursuant to 45 CFR Part 164.

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3. Permitted Uses and Disclosures by Business Associate General Use and Disclosure Provision

- (a) 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 purposes set forth in the Covered Entity's applicable policies, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity as set out in the ADH Notice of Privacy Practices incorporated herein by reference.

4. Specific Use and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, 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.
- (b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B)
- (c) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j) (1).

5. Obligations of Covered Entity

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

6. Permissible Requests by Covered Entity

- (a) 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 Covered Entity.

7. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of _____ and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible 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 either:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the contract Agreement between the Business Associate and ADH, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

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- (2) Immediately terminate this Agreement and the contract between the ADH and Business Associate if Business Associate has breached a material term of this Agreement and cure is not possible;
or
(3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

c) Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created, maintained, 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. Business Associate shall retain no copies of the Protected Health Information
- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon written notice to the Director of the ADH that return or destruction of Protected Health Information is infeasible, 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 infeasible, for so long as Business Associate maintains such Protected Health Information.

8. 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.
- (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 of 1996, Pub. L. No. 104-191.
- (c) Survival. The respective rights and obligations of Business Associate under "Effect of Termination" of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the privacy rule

9. Signatures

Signature of Business Associate Authorized Representative

Date

Printed Name of Business Associate Authorized Representative

Title

Signature ADH Program Authorized Representative

Date

Printed Name of ADH Program Authorized Representative

Title