

Sample Business Associate Contract:

[NAME OF PRACTICE] BUSINESS ASSOCIATE TERMS AND CONDITIONS

Business Associate: _____

Mental Health Practice: _____

Describe Agreement between
Business Associate and [Name of Practice]

Effective Date of these
Terms and Conditions: _____

Business Associate, as defined above, and [Name of Practice] hereby agree to amend the above-referenced agreement between Business Associate and [Name of Practice] by inclusion of these Terms and Conditions (these Terms and Conditions and the agreement are hereby referred to as “the Agreement”). These Terms and Conditions are effective as of the Effective Date specified above.

[Name of Practice] is a “Covered Entity” within the meaning of the HIPAA “Privacy Rule”, (the “Standards for the Privacy of Individually Identifiable Health Information”), which is codified at 45 C.F.R. Parts 160 and 164. [Name of Practice] has or will disclose “protected health information” to Business Associate in connection with the services provided to [Name of Practice], and Business Associate is or will be a “business associate” of [Name of Practice] under the Privacy Rule.

“Protected Health Information” or “PHI” means (subject to the definition provided at 45 C.F.R. §164.501) individually identifiable health information that Business Associate receives from [Name of Practice] or that it creates or receives on behalf of [Name of Practice] for the purposes of performing the services under this Agreement. These Terms and Conditions are intended to comply with the requirements for business associate agreements under the HIPAA Privacy Rule, and are to be construed to achieve compliance with those requirements. References in brackets, for example, “[45 C.F.R. §164.504(e)(1)],” are references to the specific Privacy Rule provision that the specific provision below is intended to address.

1. Business Associate may use or disclose PHI only as permitted in Exhibit A attached hereto and incorporated herein by reference, except that Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate consistent with the provisions of 45 C.F.R. §§164.504(e)(4)(i) and (ii). “[§164.504(e)(2)(i)],

2. Business Associate may use or disclose PHI other than as permitted or required by this Agreement or as required by law. **[§164.504(e)(2)(ii)(A)]**
3. Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. **[§164.504(e)(2)(ii)(B)]**
4. Business Associate will report to [Name of Practice] any use or disclosure of PHI not provided for by this Agreement of which it becomes aware. **[§164.504(e)(2)(ii)(C)]**
5. Business Associate will ensure that any agent of Business Associate, including a subcontractor of Business Associate, to whom it provides PHI received from or created or received by Business Associate on behalf of Medical Practice, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. **[§164.504(e)(2)(ii)(D)]**
6. Business Associate will make available PHI to the extent required under 45 C.F.R. §164.524, which describes the requirements applicable to an individual’s request for access to the PHI relating to the individual. To the extent permitted by the Privacy Rule, the obligations of Business Associate in this Paragraph apply only to “designated record sets” in Business Associate’s possession or control as such term is defined at 45 C.F.R. §164.501. **[§164.504(e)(2)(ii)(E)]**
7. Business Associate will make available PHI to the extent required for amendment and incorporates any amendments to PHI in accordance with 45 C.F.R. §164.526, which describes the requirements applicable to an individual’s request for an amendment to the PHI relating to the individual. To the extent permitted by the Privacy Rule, the obligations of Business Associate in this Paragraph apply only to “designated record sets” in Business Associate in this Paragraph apply only to “designated record sets” in Business Associate’s possession or control as such term is defined at 45 C.F.R. §164.501. **[§164.504(e)(2)(ii)(F)]**
8. Business Associate will make available PHI to the extent required to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528, which describes the requirements applicable to an individual’s request for an accounting of disclosures of PHI relating to the individual. **[§164.504(e)(2)(ii)(G)]**
9. If Business Associate receives a request, made on behalf of the Secretary of the Department of Health and Human Services, that Business Associate makes its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining [NAME OF PRACTICE]’s compliance with the HIPAA Privacy Rule, then Business Associate will either:
 - a. Promptly comply with the request
 - b. Promptly notify [NAME OF PRACTICE] that Business has received such a request. Upon Business Associate’s receipt of written Directive to do so from [NAME OF PRACTICE], Business Associate will immediately make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining [NAME OF PRACTICE]’s compliance with the HIPAA Privacy rule (45 C.F.R. Part 164) **[§164.504(e)(2)(ii)(H)]**

Provided, however, that this provision shall not apply in the event a court of competent jurisdiction determines, in response to a challenge raised by [NAME OF PRACTICE],

that the Privacy Rule provision requiring the inclusion of this provision in the Terms and Conditions is unenforceable or invalid.

10. Upon termination of this Agreement, if feasible, Business Associate will return or destroy all PHI received from [NAME OF PRACTICE] or created by or received by Business Associate on behalf of [NAME OF PRACTICE] that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this agreement to the information retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. **[\$164.504(e)(2)(ii)(I)]**
11. [NAME OF PRACTICE] may terminate this agreement if [NAME OF PRACTICE] determines that Business Associate has violated a material term of this agreement. **[\$164.504(e)(2)(iii)]**
12. These Terms and Conditions are intended for the sole benefit of the Business Associate and [NAME OF PRACTICE] and do not create any third party beneficiary rights, except to the extent that the Privacy Rule validly requires the Secretary of the Department of Health and Human Services or any other person to be a third party beneficiary to this Agreement.
13. These Terms and Conditions cannot be amended except by the mutual written agreement of Business Associate and [NAME OF PRACTICE].
14. In the event that any provision of the Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party (Business Associate or [NAME OF PRACTICE]) believes in good faith that any provision of the Terms and Conditions fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party so shall notify the other party in writing. For a period of up to 30 days, the parties shall address in good faith such concern and shall amend the terms of this Agreement, if necessary to bring it into compliance. If after such 30-day period these Terms and Conditions fail to comply with the HIPAA Privacy Rule with respect to the concern(s) raised pursuant to this Paragraph, then either party has the right to terminate this Agreement upon written notice to the other party.
15. [It may be advisable to address other issues in this contract, including any State law issues. Also, it may be advisable to consider prospective-looking provisions regarding engagements that may extend through the compliance deadline under the HIPAA "Security rule;").

BUSINESS ASSOCIATE

By: _____

Witness: _____

Date: _____

[NAME OF PRACTICE]

By: _____

Witness: _____

Date: _____