

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into effective for all purposes as of the ___ day of _____, 20__ by and between GULF COAST DERMATOLOGY, herein known as ("Covered Entity ") and [NAME OF BUSINESS ASSOCIATE], herein known as ("Business Associate"), each individually a "Party" and collectively shall also be known herein as the "Parties".

TERMS used in this Agreement that are specifically defined in HIPAA and HITECH shall have the same meaning as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined HIPAA or HITECH term/s, requirement/s or which alters the regulatory citation/s for the definition/s shall be deemed incorporated into this Agreement.

WHEREAS, Covered Entity wishes to commence a business relationship with Business Associate that shall be memorialized in this agreement or a separate agreement (the "Underlying Agreement") pursuant to which Business Associate may be considered a "Business Associate" of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services as either have been adopted, amended or modified by the "Final Rule" of January 25, 2013 and by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5); and

WHEREAS, the nature of the prospective contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information ("PHI/ePHI") as that term is defined under HIPAA; and

For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, the HITECH Act and the applicable State requirements for confidentiality of PHI/ePHI.

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

A. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

B. Breach. "Breach" shall have the same meaning as the term "breach" in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI/ePHI which compromises the security or privacy of such information.

C. Designated Record Set: “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.

D. HIPAA: “HIPAA” shall mean the Health Insurance Portability and Accountability, Act”.

E. HITECH: “HITECH” shall mean “Health Information Technology for Economic and Clinical Health, Act”.

F. OCR: “OCR” shall mean the Office for Civil Rights (who oversees and enforces HIPAA and HITECH).

G. 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, as amended by the HITECH Act and as may otherwise be amended from time to time.

H. Protected Health Information, PHI or ePHI “Protected Health Information”, “PHI” or ePHI shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

I. Required By Law: “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

J. Secretary: “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

K. Unsecured Protected Health Information “Unsecured Protected Health Information” or “Unsecured PHI/ePHI” shall mean PHI/ePHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

II. USE OR DISCLOSURE OF PHI/ePHI BY BUSINESS ASSOCIATE

A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.

B. Business Associate shall only use and disclose PHI/ePHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).

C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI/ePHI

A. Business Associate shall not use or disclose PHI/ePHI other than as permitted or required by this Agreement or as Required By Law.

B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI/ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI/ePHI in violation of this Agreement

D. Business Associate shall promptly notify Covered Entity of a Breach of PHI/ePHI following the first day on which Business Associate (or Business Associate's employee, office, agents, subcontractors or representatives) knows of such Breach or following the first day on which Business Associate (or Business Associate's employee, office, agents, subcontractors, or representatives) should have known of such Breach. Business Associate's notification to Covered Entity hereunder shall:

1. Be made to Covered Entity no later than 3 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security;

2. Include the individuals whose PHI/ePHI has been, or is reasonably believed to have been, the subject of a Breach; and

3. Be in substantially the same form as **Exhibit A** hereto.

E. In the event of an unauthorized use or disclosure of PHI/ePHI or a Breach of PHI/ePHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

F. **Business Associate shall require any agent, subcontractor or other representative that is authorized to create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate to execute a business associate agreement to agree in writing to the same terms, restrictions, conditions and requirements set forth herein that apply through this Agreement to Business Associate and Covered Entity with respect to such information. Business Associate shall terminate its business associate agreement with any subcontractor, agent or other representative if such subcontractor, agent or other representative fails to abide by any material term of such agreement. Such business associate agreement shall identify Covered Entity as a third-party beneficiary with rights of contractual enforcement in the event of any HIPAA violations.**

G. To the extent applicable, Business Associate, its agents, representatives or subcontractors shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

H. To the extent applicable, Business Associate its agents, representatives or subcontractors shall make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.

I. Business Associate, its agents, representatives or subcontractors shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI/ePHI.

J. Business Associate its agents, representatives or subcontractors agree to document such disclosures of PHI/ePHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI/ePHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI/ePHI pursuant to 45 C.F.R. §164.528, Business Associate, its agents, representatives or subcontractors agree to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.

K. Business Associate, its agents, representatives or subcontractors shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI/ePHI provided to it by Covered Entity.

L. Business Associate, its agents, representatives or subcontractors shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI/ePHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate, its agents, representatives or subcontractors shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate, its agents representatives or subcontractors.

M. Business Associate, its agents, subcontractors or other representatives may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

IV. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the date the Underlying Agreement is effective, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate its agents, subcontractors or representatives, or created or received by Business Associate its agents, subcontractors or representatives 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 IV.

B. Termination for Cause: Upon Covered Entity's knowledge of a material breach by Business Associate, its agents, subcontractors or representatives, Covered Entity shall:

1. Provide an opportunity for Business Associate, its agents, subcontractors or representatives to cure the breach or end the violation and, if Business Associate, its agents, subcontractors or representatives does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement;

2. Immediately terminate this Agreement if Business Associate, its agents, subcontractors or representatives have breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination:

1. Except as provided in paragraph C (2) of this section, upon termination of this Agreement, for any reason, Business Associate, its agents, subcontractors or representatives shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate its agents, subcontractors or representatives on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors, agents or representatives of Business Associate. Business Associate, its agents, subcontractors or representatives shall not retain any copies of the Protected Health Information.

2. In the event that Business Associate, its agents, subcontractors or representatives determine that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate its agents, subcontractors or representatives 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, its agents, subcontractors, or representatives maintains such Protected Health Information.

3. Should Business Associate, its agents, subcontractors or representatives make a disclosure of PHI/ePHI in violation of this Agreement, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

V. CONSIDERATION. Business Associate recognizes that Covered Entity shall henceforth, detrimentally rely upon the promises it has made in this Agreement in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH: Business Associate hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate, its agents, subcontractors or representatives of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate, its agents, subcontractors or representatives from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, its agents, subcontractors or representatives, Covered Entity is entitled to reimbursement and indemnification from Business Associate, its agents, subcontractors or representatives for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's, its agent's, subcontractor's or representative's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

VII. MODIFICATION: This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. 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, HITECH and HIPAA.

VIII. INTERPRETATION OF THIS CONTRACT IN RELATION TO OTHER CONTRACTS BETWEEN THE PARTIES: Should there be any conflict between the language of this contract and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW: The Business Associate, its agents, subcontractors or representatives acknowledge that by accepting the PHI/ePHI from Covered Entity, it becomes a holder of medical records information under the applicable State law/s and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the State law/s conflict regarding the degree of protection provided for protected health information, Business Associate, its agents, representatives or subcontractors shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS:

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, HITECH and HIPAA.

B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, HITECH or HIPAA means the section as in effect or as amended.

C. Notices to Business Associate: Any notice required under this Agreement to be given to Business Associate by Covered Entity or any other party subject to the Business Associate Agreement shall be made in writing to:

Name: _____ (Name of Business Associate)

Address: _____

Attention: _____

Phone: _____

D. Notices to Covered Entity: Any notice required under this Agreement to be given to Covered Entity by Business Associate or any other party subject to the Business Associate Agreement shall be made in writing to:

Name: _____ (Name of Covered Entity)

Address: _____

Attention: _____

Phone: _____

UNDERLYING AGREEMENT

PLEASE DESCRIBE BELOW THE BUSINESS ASSOCIATION BETWEEN THE COVERED ENTITY AND THE BUSINESS ASSOCIATE. DOCUMENT THE TYPE OF PROTECTED HEALTHCARE INFORMATION TO WHICH THE BUSINESS ASSOCIATE MAY OR WILL BE HAVING ACCESS TO, AS PROVIDED TO THE BUSINESS ASSOCIATE FROM THE COVERED ENTITY.

EXAMPLES:

1. Business Associate may only use or disclose PHI/ePHI:

Option 1 – OCR suggests that one option would be for the parties to provide a specific list of permissible purposes that PHI/ePHI may be used or disclosed.

Option 2 – OCR suggests that the parties reference an underlying Service Agreement, such as “as necessary to perform the services set forth in Service Agreement.” For instance, in the case of an outside third-party billing company, the Service Agreement would essentially be the billing contract between the parties.

[In addition to other permissible purposes, OCR recommends that the parties specify whether a Business Associate is authorized to use PHI or ePHI to de-identify the information in accordance with 45 CFR § 164.514(a)-(c). The parties also may wish to specify the manner in which the Business Associate will de-identify the information and the permitted uses and disclosures by the Business Associate of the de-identified information.]

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

FORM OF NOTIFICATION TO COVERED ENTITY OF

BREACH OF UNSECURED PHI

**NOTIFICATION TO COVERED ENTITY
ABOUT A
BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section IIIID (3) of the Business Associate Agreement between:

- _____, (Covered Entity) and
- _____ (Business Associate).

Business Associate hereby notifies _____ that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____

Date of the discovery of the breach: _____

Number of individuals affected by the breach: _____

The nature of unsecured PHI that was involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____