

Sample Business Associate Agreement (BAA)

Our Business Associate Agreement | Staffingly

This is the standard Business Associate Addendum (Exhibit B of the Staffingly Master Services Agreement), executed with every client engagement at no additional charge. It is provided here as a sample for your compliance review. HIPAA / HITECH: 45 CFR Parts 160 & 164.

EXHIBIT B - BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("BAA") is entered into by and between Staffingly, Inc. (the "Business Associate") and the Company set forth in that certain Services Agreement (the "Agreement") to which this BAA is attached as Exhibit __ (the "Covered Entity") and is effective as of the Effective Date of such Agreement. From time to time, Business Associate and Covered Entity may be referred to individually as a "Party" and, collectively, as the "Parties").

WHEREAS, Covered Entity and Business Associate are required to comply with the applicable HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 & 164 (the "Privacy and Security Regulations") as promulgated by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), Title XIII of Division A and Title IV of Division B (the "Health Information Technology for Economic and Clinical Health" or "HITECH Act") and other applicable laws; and

WHEREAS, the Covered Entity has engaged the Business Associate to perform "Services" as set forth in the Agreement; and

WHEREAS, in the performance of the Services, the Business Associate may maintain, access, use and/or disclose Protected Health Information ("PHI"), as that term is defined in Section 164.501 of the Privacy and Security Regulations, on behalf of and/or received from or transmitted to the Covered Entity; and

WHEREAS, the Parties are committed to complying with the Privacy and Security Regulations; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties enter into this BAA.

1. SERVICES

In the course of providing the Services, the use and disclosure of PHI between the Parties may be necessary.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE

Unless otherwise specified herein and provided that such uses or disclosures are permitted under state and Federal confidentiality laws, the Business Associate may:

(a) use the PHI in its possession to the extent necessary to perform the Services subject to the limits set forth in 45 CFR §164.514 regarding limited data sets and 45 CFR §164.502(b) regarding the minimum necessary requirements;

- (b) disclose to its employees, subcontractors and agents the minimum amount of PHI in its possession necessary to perform the Services;
- (c) use or disclose PHI in its possession as directed in writing by the Covered Entity;
- (d) use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate;
- (e) disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, so long as the Business Associate ensures that (i) the disclosures are "required by law," as defined in Section 164.103 of the Privacy and Security Regulations or (ii) the Business Associate has received written assurances from the third party regarding its confidential handling of such PHI as required in Section 164.504(e)(4) of the Privacy Regulations.

3. RESPONSIBILITIES OF THE BUSINESS ASSOCIATE WITH RESPECT TO PROTECTED HEALTH INFORMATION

The Business Associate further agrees to:

- (a) use and/or disclose the PHI only as permitted or required by the Agreement or as otherwise "required by law" as defined in Section 164.103 of the Privacy Regulations and as modified by HITECH;
- (b) use and disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform the Services or other activities required or permitted hereunder;
- (c) 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 PHI 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;
- (d) have appropriate internal policies and procedures to ensure compliance with this Agreement and use other reasonable efforts to maintain the privacy and security of the PHI and to prevent unauthorized use and/or disclosure of such PHI, including but not limited to, compliance with Subpart C of 45 CFR Part 164 with respect to electronic PHI;
- (e) to the extent the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- (f) notify the Covered Entity's designated Privacy Officer, in writing, of any use and/or disclosure, and any other security incident of which it becomes aware, of the PHI not permitted or required hereunder within five (5) days of the Business Associate's discovery of such unauthorized use and/or disclosure or other security incident;
- (g) develop and implement policies and procedures for mitigating, to the greatest extent possible, any negative or unintended effects caused by the improper use and/or disclosure of PHI that the Business Associate reports to the Covered Entity;
- (h) make available PHI in a designated record set to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.524;
- (i) make any amendments to PHI in a designated record set as directed or agreed to by the Covered Entity 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) provide the Covered Entity with all information the Covered Entity requests, in writing, to respond to a request by an individual for an accounting of the disclosures of the individual's PHI as permitted in Section 164.528 of the Privacy Regulations within thirty (30) days of receiving the request;

(k) upon reasonable advance notice, make available to Covered Entity all records, books, agreements, and policies and procedures related to the use and/or disclosure of PHI to ensure adherence to the HIPAA requirements;

(l) make available all records, books, agreements, and policies and procedures relating to the use and/or disclosure of PHI as requested by the Secretary of HHS for determining the Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges;

(m) require all of its subcontractors and agents that receive or use, or have access to, PHI to agree, in writing, to adhere to the same restrictions and conditions that apply to the Business Associate pursuant to this Agreement; and

(n) notify the Covered Entity within five (5) days of the discovery of any security incidents or breaches of unsecured PHI as required by 45 CFR § 164.410.

4. RESPONSIBILITIES OF THE COVERED ENTITY WITH RESPECT TO PROTECTED HEALTH INFORMATION

The Covered Entity hereby agrees:

(a) to advise the Business Associate, in writing, of any arrangements of the Covered Entity under the Privacy Regulations that may impact the use and/or disclosure of PHI by the Business Associate under this Agreement;

(b) to provide the Business Associate with a copy of the Covered Entity's current Notice of Privacy Practices ("Notice") required by Section 164.520 of the Privacy Regulations and to provide revised copies of the Notice, should the Notice be amended in any way;

(c) to advise the Business Associate, in writing, of any revocation of any consent or authorization of any individual and of any other change in any arrangement affecting the use and or disclosure of PHI to which the Covered Entity has agreed, including, but not limited to, restrictions on use and/or disclosure of PHI pursuant to Section 164.522 of the Privacy Regulations;

(d) to obtain any patient consent or authorization that may be required by the Privacy Rule or the Notice or applicable law prior to furnishing Business Associate with PHI pertaining to an individual;

(e) to notify STAFFINGLY of any limitation(s) in the Notice to the extent that such limitation may affect STAFFINGLY's use or disclosure of PHI; and

(f) to notify STAFFINGLY of any changes in, restriction on, or revocation of, the permission by an individual to use or disclose his or her PHI to the extent that such changes may affect STAFFINGLY's use or disclosure of PHI.

5. TERM AND TERMINATION

This Addendum shall become effective on the Effective Date and shall continue until the expiration or other termination of the Agreement.

If the Covered Entity makes the determination that the Business Associate has breached a material term of this Addendum, then at the sole discretion of the Covered Entity, it shall provide the Business Associate with written notice of the material breach and allow the Business Associate fifteen (15) days to cure such breach upon mutually agreeable terms; provided, however, that if an agreement regarding a satisfactory cure is not achieved within the fifteen (15) days, the Covered Entity may immediately terminate the Agreement upon written notice to the Business Associate.

Upon termination of this Addendum for any reason, the Business Associate shall:

- (a) recover any PHI in the possession of its agents or contractors;
- (b) at the option of the Covered Entity and, if feasible, either return all PHI in its possession to Covered Entity or destroy all PHI in its possession.

If it is determined by the Business Associate that it is not feasible to return or destroy any or all of the PHI, the Business Associate must notify the Covered Entity of the specific reasons in writing. The Business Associate must continue to honor all protections, limitations and restrictions herein with regard to the Business Associate's use and/or disclosure of PHI so retained and to limit any further uses and/or disclosures to the specific purposes that render the return or destruction of the PHI not feasible.

Further, the Business Associate shall provide written notice to the Covered Entity if it is unable, because it is not feasible, to obtain any or the entire PHI in the possession of an agent or contractor. The Business Associate shall require the agent or contractor to honor any and all protections, limitations and restrictions herein with regard to the agent's or contractor's use and/or disclosure of any PHI so retained and to limit any further uses and/or disclosures to the specific purposes that render the return or destruction of the PHI not feasible.

BAA SIGNATURE - STAFFINGLY, INC. ONLY

This Business Associate Addendum is executed solely by Staffingly, Inc.

Dan Nandan, CEO