

BUSINESS ASSOCIATE CONTRACT PROVISIONS

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Medical Privacy - National Standards to Protect the Privacy of Personal Health Information

Specific Definitions:

- a. "Business Associate" shall mean Professional Staffing Group, Inc., Trust Administrators, Inc., Benefit Services, Inc., BenefitFinder™ and its affiliates, subsidiaries or companies under a controlled group of corporations.
- b. "Covered Entity" shall mean individuals as well as employers and its employees for whom the Business Associate provides service.
- c. "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).
- d. "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" 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.
- f. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- g. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Catch-All Definitions:

Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in the Privacy Rule.

Obligations and Activities of Business Associate

Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

- a. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- b. Business Associate agrees to mitigate, to the extent practicable, 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.
- c. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- d. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- e. Business Associate agrees to provide access, at the request of Covered Entity and at reasonable time and manner, to assist Covered Entity with its benefit plans and 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.
- f. 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 at the request of Covered Entity or an Individual, and in the time and manner necessary to complete its task(s).
- g. 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 or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- h. 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.
- i. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner necessary to perform its tasks, information collected in accordance with its obligations, 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.

Permitted Uses and Disclosures by Business Associate
General Use and Disclosure Provisions

- 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 following purposes, 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. Additional disclosure would be necessary: (1) to perform its obligations as consultants, administrators, brokers or insurance agents for Covered Entity and its employee benefit plans, (2) to create limited data sets for services in the preceding sentence and (3) compliance with 29 CFR 2509.75-8, D-2 as it relates to performing ministerial duties for Covered Entity's employee benefit plans.
- b. 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 and its employees, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- c. 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.
- d. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and

administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

e. 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 42 CFR § 164.504(e)(2)(i)(B).

f. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

Obligations of Covered Entity to Business Associate

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions [provisions dependent on business arrangement]

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.

a. 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.

b. 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.

Permissible Requests by Covered Entity

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. There is no exception if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

Term and Termination

The Term of this Agreement shall be effective as of the date administrative, consulting or brokerage services commence, but not prior to April 14, 2003, 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. It is understood that because such information may be covered by ERISA, records or

data may be retained for as long as six (6) years from the termination date.

a. 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 and end the violation within a reasonable time or terminate this Agreement if Business Associate does not cure the breach or end the violation within the "reasonable" time specified by Covered Entity. The provisions of any separate agreement(s) are incorporated herein by reference and shall supersede the previous sentence in the event of a conflict in the time allowed by Covered Entity to cure the breach;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

b. 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 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 unless required by other laws such as ERISA.
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. In the event 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.

Miscellaneous

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

- a. **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.
- b. **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- c. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

Effective Date - This Business Associate Agreement is effective April 14, 2003.

For additional information, contact: Trust Administrators, Inc., One Kaiser Plaza, Suite 401, Oakland, CA 94612. Telephone: 510-451-2810