BUSINESS ASSOCIATE AGREEMENT TO THE NORTH DAKOTA DATA USE & PARTICIPATION AGREEMENT

STATE OF NORTH DAKOTA
NORTH DAKOTA HEALTH INFORMATION NETWORK
SFN 60132 (11-2016)

The North Dakota Health Information Network ("NDHIN") a health information exchange established under N.D.C.C. § 54-59-26 (2)(b) and Participant agree to the terms and conditions of this Business Associate Agreement in order to comply with the HIPAA Rules now in effect and as may be amended from time to time. In addition, NDHIN and Participant agree to these terms to satisfy the requirements of 42 C.F.R. Part 2 (Part 2 Regulations) for NDHIN to act as a Qualified Service Organization on behalf of Participant, in the event Participant is a substance abuse treatment program under the Part 2 Regulations. Participants in the NDHIN do not become Business Associates of each other by virtue of this Agreement.

For purposes of this Business Associate Agreement, Protected Health Information ("PHI") includes only Individually Identifiable Health Information that is provided to NDHIN by Participant, or that is otherwise received from, or created or received by, NDHIN on behalf of a Participant.

1. DEFINITIONS.

(a) Catch-all definitions. The following terms used in this Business Associate Agreement have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Individually Identifiable Health Information, Minimum Necessary, Notice of Privacy Practices, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

(b) Specific definitions:

Business Associate. (also referred to as "Business Associate (NDHIN)") generally has the same meaning as the term "Business Associate" at 45 C.F.R. §160.103, and in reference to the party to this agreement, means the State of North Dakota acting through its Department of Information Technology to establish and maintain the North Dakota Health Information Network ("NDHIN").

Covered Entity. (also referred to as "Covered Entity (Participant)") generally has the same meaning as the term "Covered Entity" at 45 C.F.R. § 160.103, and in reference to the party to this agreement, means the health care provider, health plan, or other organization that is a Participant in the NDHIN and whose representative has signed this Business Associate Agreement.

HIPAA Rules. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

Agreement. "Agreement" means, unless the context indicates otherwise, the Participation Agreement between a Participant and the NDHIN granting the Participant the right to access and use the NDHIN.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate (NDHIN) agrees to:

(a) Not use or disclose PHI other than as permitted or required by this Business Associate Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;

(c) Report to any Covered Entity (Participant), without unreasonable delay and in no case later than ten (10) calendar days after the discovery, any use or disclosure of the entity's PHI not provided for by this Business Associate Agreement of which the Business Associate (NDHIN) becomes aware, including any breach of unsecured PHI as required by 45 C.F. R. §164.410, and any security incident of which the Business Associate becomes aware (but not a breach or security incident caused by a Covered Entity), and the report must:

(1) Include, to the extent possible, the identification of each Individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach; and

(2) also provide the Covered Entity with any other available information that the Covered Entity is required to include in a notification to the Individual under 45 C.F.R. §164.404(c) at the time of the notification, or promptly thereafter as information becomes available; and

(3) Indicate whether the breach affects more than one Covered Entity and ask each affected Covered Entity whether the entity concurs in the content of the notice of the breach and whether the affected entity wishes to have the Business Associate complete and submit all required notifications, including notification to Individuals, the media, if required, and the Secretary to be submitted by the Business Associate;

(d) Investigate, identify, and respond to any suspected or known security incident; report to an affected Covered Entity (Participant) without unreasonable delay and in no case later than five (5) calendar days after the discovery, any security incident if there is a reasonable risk of harmful effects to the security of the entity's PHI or information system; mitigate and cooperate with any affected Covered Entity in mitigating, to the extent practicable, harmful effects of any security incident that is known to the Business Associate (NDHIN); and document any security incident and its outcomes;

(e) In accordance with 45 C.F.R. §§ 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 (NDHIN) agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to that information;

(f) Forward to the Covered Entity (Participant), without unreasonable delay and in no case later than five (5) calendar days after the request is received, any request for access to PHI in a designated record set received directly from an Individual; or make available PHI in a designated record set to the Covered Entity, or to an Individual as directed by a Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524;

(g) Forward to a Covered Entity (Participant) a request by an Individual to make amendments to the Individuals PHI in a designated record set of the Covered Entity, or make amendments as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C. F.R. § 164.526;

(h) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity (Participant) as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528; and if a request for an accounting is delivered directly to Business Associate (NDHIN), the Business Associate shall within five (5) calendar days forward the request to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;

(i) To the extent the Business Associate (NDHIN) is to carry out one or more of Covered Entity's (Participants) obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of those obligation(s);

(j) Make Business Associates (NDHIN's) internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules;

(k) Promptly inform Covered Entity (Participant) and allow Covered Entity to participate, at Covered Entity's expense, in any response to any subpoena, discovery request, or administrative or judicial order or request for access to Covered Entity's PHI served on Business Associate (NDHIN);

(l) Refer any request from an Individual to disclose PHI to a third party to the Covered Entity (Participant or Participants) that created the information, except that if requested by the Covered Entity, Business Associate (NDHIN) may disclose the information to a third party if Business Associate is notified by Covered Entity that Covered Entity has received a valid authorization from the Individual to disclose the requested information; and

(m) Provide Covered Entity (Participant) upon request with reasonable notice, access to Business Associates (NDHINs) premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

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

(a) Business Associate (NDHIN) may only use or disclose PHI as necessary to perform the services set forth in the Participation Agreement and in addition:

(1) subject to the Participation Agreement and NDHIN Policies and Procedures, for data aggregation services related to the health care operations of a Covered Entity that is a Participant;

(2) to manage requests for, and disclosures of, PHI among Covered Entities (Participants);

(3) to create and maintain a master patient index;

(4) to provide a record locater or patient matching service;

(5) to create standardize data formats;

(6) to implement business rules to assist in the automation of data exchange; and

(7) to facilitate the identification and correction of errors in health information records.

(b) Business Associate (NDHIN) may use or disclose PHI as required by law.

(c) Business Associate (NDHIN) agrees to make uses and disclosures and requests for PHI subject to the following minimum necessary requirements: (1) as necessary to perform the services set forth in the Participation Agreement; or (2) as necessary to perform the services set forth in subsection (a).

(d) Business Associate (NDHIN) may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity (Participant), except the Business Associate may use or disclose PHI for Business Associates own management and administration and legal responsibilities or for data aggregation services on behalf of multiple Covered Entities subject to the Participation Agreement and NDHIN Policies and Procedures.

4. TERM AND TERMINATION.

(a) Term. The Term of this Business Associate Agreement shall be effective as of the date it is signed by the Covered Entity (Participant), and shall terminate concurrently as of the date of termination of the Agreement or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate (NDHIN) authorizes termination of this Agreement by Covered Entity (Participant), if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity. If neither termination nor cure is feasible, Covered Entity may report the violation to the Secretary.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate (NDHIN), with respect to PHI received from Covered Entity (Participant), or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

(1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(2) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;

(3) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

(4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which the PHI was retained and subject to the same conditions set out in Section 3 which applied prior to termination; and

(5) Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, and if the information is in an electronic format and the information is not destroyed, provide a copy to the Covered Entity at no cost in a format that is commonly used for export (e.g., comma delimited, text file, Word, Excel, or Access database) that is specified by the Covered Entity.

(6) Obtain all copies or ensure the destruction of any PHI created, received, or maintained by subcontractors.

(7) Provide the Covered Entity with written notification of any conditions that make return or destruction of PHI infeasible.

(d) Survival. The obligations of Business Associate (NDHIN) under this Section shall survive the termination of the Agreement.

5. LIABILITY.

Business Associate (NDHIN) and Covered Entity (Participant) each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this Business Associate Agreement.

6. INTERPRETATION OF BUSINESS ASSOCIATE AGREEMENT IN RELATION TO OTHER CONTRACTS.

If there is any conflict between this Business Associate Agreement and the Participation Agreement, the more stringent provisions of the Business Associate Agreement or the Participation Agreement, respectively, shall control and prevail unless the parties specifically state in a subsequent written agreement that the provisions of the later agreement control over this Section of the Business Associate Agreement.

7. COMPLIANCE WITH STATE LAW.

If the HIPAA Rules and state law conflict regarding the degree of protection provided for PHI, Business Associate (NDHIN) shall as required by 45 C.F.R. §160.203 comply with the more stringent protection requirement.

8. MISCELLANEOUS.

(a) Ambiguity. Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with the HIPAA Rules.

(b) No Third-Party Beneficiary. Except as otherwise explicitly stated, in this Business Associate Agreement, nothing in this Agreement is intended, nor may be construed, to create any right in any third party.

(c) Equitable Remedies. The parties agree that Covered Entity (Participant) would not have an adequate remedy at law for any breach or threatened breach by Business Associate (NDHIN) of the terms of this agreement, and therefore Covered Entity may enforce this Business Associate Agreement in equity in any manner, including but not limited to an action for specific performance, temporary restraining order, injunction, or any combination of those remedies. Covered Entity's right to any such equitable remedy shall be in addition to all other rights and remedies which Covered Entity may have, including the right to damages.

(d) Notices to Covered Entity (Participant). All notices required or permitted to be given under this Business Associate Agreement must be given in writing and shall be delivered by hand or sent by certified mail or courier service, return receipt requested. Notice shall be effective when received if delivered by hand, or on the date shown on the return receipt, if by mail or courier service. Notices shall be sent as follows:

Covered Entity's Name (Participant)			
Privacy Officer, Compliance Officer or Other Representative			
Address	City	State	ZIP Code
Email Address, if notice by e-mail is permitted			

(e) Severable Provisions. In the event that any provision of this Business Associate Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this agreement, the provision shall be ineffective to the extent of the violation without invalidating any other provision of this Business Associate Agreement.

(f) Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Rules means the section as in effect or as may be amended.

(g) Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time to allow Covered Entity (Participant) to comply with the requirements of the HIPAA Rules and any other applicable law. This Business Associate Agreement may not be amended, altered or modified except by written agreement signed by Business Associate (NDHIN) and Covered Entity. No provision of this Business Associate Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision may not be construed as a waiver of any other term or provision.

IN WITNESS OF THIS, the Parties have caused this Business Associate Agreement to the Participation Agreement to be executed by their duly authorized representatives as of the date indicated below.

Name of Participant			
Name of CEO or Individual Authorized to Sign on Behalf of Participant	Title of Authorized Representative		
Address	City	State	ZIP Code
Email Address		Telephone Number	
Signature of CEO or Individual Authorized to Sign on Behalf of Participant		Date	

North Dakota Health Information Network Participant

Name of Authorized Representative Sheldon Wolf	Title of Authorized Representative Health Information Technology Director		
Address 4201 Normandy Street	City Bismarck	State ND	ZIP Code 58503-1324
Email Address shwolf@nd.gov		Telephone Number (701) 328-1991	
Signature of NDHIN Official		Date	