

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“BAA”) is by and between the National Association of Boards of Pharmacy (“NABP” or “Business Associate”) and Verified Pharmacy Program Organization and facility/facilities, (“Covered Entity”) (collectively between NABP and Covered Entity referred to as “parties”.) The parties agree that the BAA is effective as of the earlier of the following dates: the Effective Date of the Agreement or upon the date that Protected Health Information is or was acquired, accessed, used or disclosed.

In consideration of the mutual promises, covenants, terms, and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties further agree as follows:

RECITALS and SCOPE

A. NABP provides services such as the Verified Pharmacy Program™ (VPP™) to Covered Entity pursuant to the VPP Testament and Agreement ("Agreement"). NABP and Covered Entity agree that this BAA is hereby incorporated by reference into the Agreement and replaces any prior BAA executed by and between the parties.

B. The purpose of this BAA is to satisfy the standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("CFR"), and the regulations related to the American Recovery and Reinvestment Act of 2009 (“ARRA”), which includes the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as all of the foregoing may have been or may in the future be amended from time to time (collectively, “HIPAA”), that Business Associate provide Covered Entity, as a Covered Entity under HIPAA, with "satisfactory assurances" that Business Associate will handle any Protected Health Information that it receives or creates pursuant to the Agreement in a manner that is compliant with the Business Associate’s and Covered Entity’s responsibilities under HIPAA.

1. Catch-all Definition

The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules, as may be amended from time to time: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. Specific Definitions

(a) *Business Associate*. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean [Insert Name of Business Associate].

(b) *Covered Entity*. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean [Insert Name of Covered Entity].

(c) *HIPAA Rules*. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as may be amended from time to time.

3. Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose Protected Health Information other than as permitted or required by the BAA, the Agreement, or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the BAA, the Agreement, or as required by law;

(c) Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the BAA or the Agreement of which it becomes aware without unreasonable delay, but in no event later than 30 days after Business Associate's discovery of such unauthorized disclosure of Breach, including Breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) 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 Protected Health Information 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;

(e) To the extent, if any, that Business Associate maintains the Protected Health Information of an Individual in a designated record set, make available Protected Health Information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Provide to Covered Entity, in a time and manner designated by Covered Entity, information collected in accordance with the Agreement and/or this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and as permitted under state and federal law.

(g) Make any amendment(s) to Protected Health Information 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 Covered Entity's obligations under 45 CFR 164.526;

(h) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(i) To the extent the Business Associate is to carry out one or more of 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); and

(j) Make its internal practices, books, and records available to the Covered Entity or, if requested by Business Associate and at its expense, to a third party mutually selected by Covered Entity and Business Associate to audit Business Associate's records for compliance with HIPAA Rules, or at the request of the Covered Entity to the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the HIPAA Rules.

4. Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise permitted in the Agreement or this BAA, Business Associate may only use or disclose Protected Health Information for the purposes of performing functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement.

(b) Business Associate may use or disclose Protected Health Information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.

(d) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

(f) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity to the extent required and in accordance with the provisions of the Agreement.

5. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information and such Individual changes or revocation are permitted under applicable law.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

6. 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 Subpart E of 45 CFR Part 164 if done by Covered Entity.

7. Term and Termination

(a) *Term.* The Term of this BAA shall be effective as of the earlier of the following dates: the Effective Date of the first executed Agreement or upon the date of commencement of services in which Protected Health Information is or was acquired, accessed, used or disclosed, and shall terminate upon termination of the only Agreement or on the date Covered Entity or Business Associate terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) *Termination for Cause.* The Parties authorize termination of this BAA by a Party, if said Party determines the other Party has violated a material term of the BAA and the breaching Party has not cured the Breach or ended the violation within the time specified by the non-breaching Party.

(c) *Obligations of Business Associate Upon Termination.*

Upon termination of this BAA or the only remaining Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information except as provided herein. The Parties acknowledge that Business Associate may retain one copy of Protected Health Information for legal purposes in connection with this BAA or the Agreement.

Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

1. Retain only that Protected Health Information 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 Protected Health Information that the Business Associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
4. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at paragraph (e) above under "Permitted Uses and Disclosures By Business Associate, which applied prior to termination; and
5. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information 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.

(d) *Survival*. The obligations of the Parties under this Section shall survive the termination of this BAA.

8. Miscellaneous

(a) *Regulatory References*. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended for the applicable time period.

(b) *Amendment*. The Parties agree that this BAA shall be automatically amended, as is necessary, to incorporate new or modified requirements of HIPAA, HITECH, or HIPAA rules, as may be enacted or promulgated from time to time, and that no written amendment to this BAA is required in order to bind the Parties to its terms. For all other amendments to this BAA, the parties must consent to such amendments in writing.

(c) *Interpretation*. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.

(d) *Survival*. The respective rights and obligations of the Parties under this BAA that by their nature prescribe continuing rights and obligations shall survive the termination of this BAA.

(e) *Severability*. *If any provision of this BAA is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this BAA shall remain in full force and effect.*

(f) *Other agreements*. *In any conflict between this BAA and the applicable Agreement, the terms of this BAA with respect to issues of HIPAA laws, HIPAA Rules and PHI, shall prevail. For all other conflicts, the applicable Agreement shall prevail. Nothing herein shall be construed to*

add any additional rights or responsibilities to either Party that are not specifically required by HIPAA, HITECH, or HIPAA Rules as applicable.

(g) *No third party beneficiaries.* Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.