



As you may know, recent changes in federal regulations related to the Health Insurance Portability and Accountability Act (HIPAA) have been instituted for Business Associates. The Health Information Technology for Economic and Clinical Health Act (HITECH Act) requires compliance with new provisions by all Covered Entities and their Business Associates. Therefore, ECP must update all Business Associate documents in accordance with these changes.

Please find attached, ECP's updated Business Associate Agreement. Please print and sign the Business Associate Agreement and return an original signed copy to:

ECP  
415 Greenwell Ave  
Cincinnati, OH 45238  
Attn: Brigott Elkins

This agreement will supersede all Business Associate Agreements between our organizations. In order to move forward with this process successfully, we would appreciate the return of this document within fifteen (15) days of this email.

If you have any questions, please do not hesitate to contact me. Thank you for your consideration in this matter.

Sincerely,

Brigott Elkins  
ECP  
Account Manager  
513-557-3342  
[belkins@4ecp.com](mailto:belkins@4ecp.com)

## THE CONSULT INC./ECP BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between \_\_\_\_\_

\_\_\_\_\_ ("Covered Entity") and  
The Consult, Inc./Electronic Commerce Processing ("Business Associate"), on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
("Effective Date").

### Recitals

**WHEREAS**, the U.S. Department of Health and Human Services ("HHS") has issued regulations promulgated under 45 C.F.R. §160 and §164 pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Amendments to such Act or Regulation, governing the privacy and security of individually identifiable health information obtained, created, or maintained by certain entities as required under the HIPPA Privacy and Security Rules; and

**WHEREAS**, Covered Entity and The Consult, Inc./ECP, Inc. ("Parties") recognize that they are considered "Covered Entities" as that term is defined within the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and

**WHEREAS**, the Parties further recognize that they have entered into a separate relationship that also makes The Consult, Inc./ECP a "Business Associate" of Covered Entity as defined by 45 CFR 160.103 and the business relationship of the parties requires Covered Entity to disclose to The Consult, Inc./ECP, Inc. or requires The Consult, Inc./ECP, Inc. to create, receive or disclose to or on behalf of Covered Entity, individually identifiable health information that is private and must be afforded special protection by each of the parties in compliance with the HIPPA Privacy and Security Rules (45 C.F.R. Parts 160 and 164), and the Health Information technology for Economic Clinical Health Act ("HITECH") 42 U.S.C §17921 through §17953, and any regulations, and guidance issued by the Secretary of HHS thereunder, hereinafter referred to as the "Secretary"; and

**WHEREAS**, pursuant to the Privacy Rule, all Business Associates and Covered Entities must agree, in writing, to certain mandatory provisions regarding the use and disclosure of Protected Health Information ("PHI"); and

**WHEREAS**, the purpose of this Agreement is to comply with the requirements of the Privacy and Security Rules and to comply with the requirements of HITECH, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. § 164.504(e) and the Improved Privacy Provisions and Security Provisions of 42 U.S.C. §17931 through §17940.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

**1. Definitions.** When used in this Agreement, the following terms shall have the meanings set forth below. Any term used in this Agreement, to the extent it is defined under HIPAA or HITECH, but not herein, shall have the same definition it is given in HIPPA or HITECH.

Administrative Safeguards has the same meaning it is given in 45 C.F.R. § 164.304.

Breach with respect to Unsecured PHI has the same meaning given that term in 42 U.S.C. § 17921, and with respect to unsecured PHR has the same meaning given the term in 42 U.S.C. § 17937.

Business Associate has the same meaning it is given in 45 C.F.R. § 162.103.

Confidentiality has the same meaning it is given in 45 C.F.R. § 164.304.

Contract refers to one or more other written agreements or arrangements in force and effect between Covered Entity and Business Associate, the subject matter or express terms of which, require the parties to

enter into this Business Associate Agreement.

Covered Entity has the same meaning it is given in 45 C.F.R. § 162.103.

Designated record set has the same meaning it is given in 45 C.F.R. § 164.501.

Disclosure has the same meaning it is given in 45 C.F.R. § 162.103.

Electronic Health Record ("EHR") has the same meaning it is given in 42 U.S.C. 17921.

Electronic protected health information has the same meaning it is given in 45 C.F.R. § 162.103.

Individually Identifiable Health Information has the same meaning it is given in 45 C.F.R. § 162.103.

Integrity has the same meaning it is given in 45 C.F.R. § 164.304.

Personal Health Record ("PHR") has the same meaning it is given in 42 U.S.C. 17921.

Physical Safeguards has the same meaning it is given in 45 C.F.R. § 164.304.

Protected Health Information ("PHI") has the same meaning it is given in 45 C.F.R. § 162.103

Security Incident has the same meaning it is given in 45 C.F.R. § 164.304.

Technical Safeguards has the same meaning it is given in 45 C.F.R. § 164.304.

Transaction and Standard Transaction have the same meaning given to those terms in 45 C.F.R. § 160.103.

Unsecured PHI has the same meaning it is given in 42 U.S.C. 17932

## **2. Obligations of Business Associate**

- a. Appropriate Safeguards. Business Associate shall implement and maintain at all times during the term of this Agreement all necessary and required administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity in accordance with the HIPPA Security Rule, including without limitation 45 C.F.R. §§ 164.308, 164.310 and 164.312 and shall use appropriate safeguards to prevent use or disclosure of electronic protected health information other than is provided for in this Business Associate Agreement. Further, Business Associate shall comply with the policies and procedures and documentation requirements of the HIPPA Security Rule, including but not limited to 45 C.F.R. § 164.316.
- b. Business Associate's Agents. Business Associate shall ensure that its agents, including subcontractors, to whom it makes a permitted disclosure of PHI agree in writing to the same restrictions and conditions that apply to Business Associate under the terms of this Business Associate Agreement, and that the agents and/or subcontractors will implement and maintain the same safeguards required under paragraph 2(a) of this Business Associate Agreement.
- c. Reporting of Security Incident or Breach. Business Associate shall report to Covered Entity any security incident of which Business Associate becomes aware, and shall also report to Covered Entity any prohibited or disclosure of which Business Associate becomes aware. If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information then Business Associate, following a discovery of a breach of such information as defined in 42 U.S.C. §17921, shall notify Covered Entity of such breach.
  - i. The notice in the case of a breach as defined in 42 U.S.C. §17921 shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have

been, accessed, acquired, or disclosed during such breach. Said notice shall be provided to Covered Entity shall be made without unreasonable delay, and in no case shall be later than 60 calendar days after the discovery of the breach.

- ii. A breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate), or should reasonably have been known to Business Associate to have occurred.
- d. Access to and amendment of PHI. In the event Business Associate or any of its agents or subcontractors maintains PHI in a Designated Record Set, Business Associate agrees to do the following within (10) calendar days of receiving a request for the PHI from Covered Entity:
  - i. Make such PHI available to Covered Entity for inspection and copying to enable Covered Entity to comply with the requirements of §164.524;
  - ii. Make such PHI available to Covered Entity for amendment, and incorporate such amendment, pursuant to §164.526.
- e. Access to EHR. In the event Business Associate or one of its agents or subcontractors maintains any EHR, Business Associate agrees to make available to Covered Entity in electronic format within ten (10) days of Covered Entity's request for same to enable Covered Entity to comply with the provisions of HITECH including 42 U.S.C. §17935(e).
- f. Government Access. Business Associate agrees to make internal practices, books, and records 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 at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- g. Accounting of Disclosures. Business Associate agrees to make available to Covered Entity the information necessary for Covered Entity to provide an individual an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall maintain a record of all disclosures of PHI as required by 45 C.F.R. § 164.528 that would allow an for an accurate accounting of disclosures for a period of six (6) years preceding the date any request for such accounting, however, an accounting of disclosures of PHI maintained in an EHR for the treatment, payment or Health Care Operations of Covered Entity need only be collected and maintained by Business Associate for a period of three (3) years preceding the date of any request for such disclosure.
- h. Obligation to Cure and/or Mitigate. Business Associate agrees to cure and/or mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any security incident or breach, and for any use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- i. Standard Transactions. If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.

### **3. Obligations of Covered Entity**

- a. Covered Entity will provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, and any subsequent material changes to such Notice, and of any limitations in the Notice, to the extent that such limitation may affect Business Associate's use of disclosure of PHI.
- b. Covered Entity will inform Business Associate of any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.
- c. Covered Entity will inform Business Associate of any changes to or revocation of a permission given by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures of PHI.
- d. Covered Entity will provide Business Associate with any policies and procedures implemented by

- Covered Entity in accordance with 45 C.F.R. § 164.530 and any changes or updates thereto, to the extent the changes or updates affect Business Associate's use or disclosure of PHI.
- e. Covered Entity will notify Business Associate of the person Covered Entity has designated as its Privacy and Security Officer and any changes to same.
  - f. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would violate the HIPPA Privacy or Security Rules or HITECH if the use or disclosure was made by Covered Entity.
  - g. In the event of a breach of unsecured protected health information reported to Covered Entity by Business Associate, Covered Entity shall provide the notices to individuals, the media and the Secretary as required by 42 U.S.C. 17932.

#### **4. Permitted Uses and Disclosures**

- a. Generally. Business Associate shall only use or disclose PHI for the purpose of performing Business Associate's legal obligations to Covered Entity as limited by this Agreement. Business Associate may only use or disclose PHI on behalf of Covered Entity when such use or disclosure:
  - i. Would not violate any applicable provision of the Privacy Rule or HITECH if the use or disclosure was made by Covered Entity; and
  - ii. The use or disclosure meets the limitations set forth in 42 U.S.C. § 17935(b)(1)(A) including the minimum necessary requirements of the Privacy Rule at 45 C.F.R. § 164.502(b)(1) applicable to Covered Entity; or is limited to the limited data set as defined in 45 C.F.R. § 164.514(e)(2), in which the PHI is contained.
- b. Permitted Uses. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate; to carry out the legal responsibilities of the Business Associate; or for data aggregation purposes pursuant to 45 C.F.R. § 164.504(e)(2)(i)(B) for the Health Care Operations of Covered Entity.
- c. Permitted Disclosures. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities 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 be held confidentially 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.

#### **5. Prohibited Uses and Disclosures**

Business Associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless Covered Entity obtained from the individual, in accordance with 45 C.F.R. § 164.508 a valid authorization that includes a specification of whether the protected health information can be further exchanged for remuneration by Business Associate. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to contracts between the parties.

#### **6. Term and Termination**

- a. Term. The Term of this Agreement shall be effective as of the Effective Date 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.
- b. Termination for Cause. Covered Entity shall have the right to immediately terminate this Agreement and the Contract with Business Associate upon Covered Entity learning of a material breach of this Business Associate Agreement by Business Associate. Business Associate and Covered Entity each acknowledge that pursuant to 45 C.F.R. § 164.504(e)(1)(ii) and 42 U.S.C. 17934(b) that if one party (the 'non-breaching party') knows of a pattern of activity or practice of

the other party (the 'breaching party') that is or may constitute a material breach or violation of Covered Entity's obligations under HIPPA or HITECH, the non-breaching party will be obligated to take reasonable steps to cure the breach. Further, if such steps to cure are unsuccessful or cure is infeasible, the non-breaching party will terminate the Contract. In the event termination is infeasible, the non-breaching party will report the breach to the Secretary. In any event the non-breaching party will provide written notice to the breaching party of such pattern of activity or practice within five (5) business days of discovering same, and shall meet with the breaching party to review and discuss such steps as necessary to cure the activity or practice.

c. Effect of Termination.

- i. Except as provided in paragraph (ii) 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 that Business Associate or any of Business Associates agents or subcontractors still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- ii. 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. Upon mutual agreement of the Parties that 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.

**6. Miscellaneous**

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. 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, Public Law 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5(c) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the Privacy Rule.
- e. No Third Party Beneficiaries. Nothing in this Agreement, either express or implied, is intended to confer, nor will anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. State Law. Where any provision of State law is more stringent or otherwise constitutes a basis upon which the Privacy Rule is preempted, state law controls and the Parties agree to comply fully therewith.
- g. Entire Agreement and Amendment. This agreement is the entire agreement between the Parties in regard to its subject matter and shall supersede any prior agreements. This Agreement may not be amended or modified except by a written amendment signed by the parties, or as required by law or due to subsequent revisions to the Privacy Rule.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

**Covered Entity**

By: \_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

**The Consult, Inc./ECP**

By: \_\_\_\_\_  
(Signature)

Print Name: Jeffrey E. Rinear

Print Title: Vice President

Address: 415 Greenwell

City, State, Zip: Cincinnati, OH 45238