This Business Associate Agreement (Agreement), is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the Effective Date), by and between ABC Company (Covered Entity) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Business Associate), collectively termed the “Parties”, to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 (“the Privacy Rule”) and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C (“the Security Rule”), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated there under and any applicable state confidentiality laws.

Business Associate provides services to or on behalf of Covered Entity. In connection with these services, Covered Entity discloses to Business Associate certain Protected Health Information (PHI) that is subject to protection under the HIPAA Rules and the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity. In consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use. Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate. Business Associate agrees to:

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

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

(c) Provide to Covered Entity a description of Business Associate’s Technical, Physical, and Administrative security safeguards that protect PHI;

(d) Provide to Covered Entity a copy of annual auditor reports and test results of Business Associate's Technical, Physical, and Administrative Safeguards that protect PHI.

(e) Report to Covered Entity within 72 hours any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(f) 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;

(g) Make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;

(h) Make any amendment(s) 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 Covered Entity’s obligations under 45 CFR 164.526;

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

(j) 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

(k) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose PHI as necessary to perform the services set forth in Service Agreement. Business Associate is authorized to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

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

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

(d) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 except for the specific uses and disclosures set forth below.

(e) Business associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(f) Business Associate may disclose PHI 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.

4. 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 PHI.

(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 PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI 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 PHI.

5. Permissible Requests. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

6. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of [Insert effective date], and shall terminate on [Insert termination date or event] 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 authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement including a breach of PHI.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity all PHI 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 PHI. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, 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 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 CFR 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 such PHI was retained and subject to the same conditions set out in section “Permitted Uses and Disclosures by Business Associate” which applied prior to termination; and

5. Return to Covered Entity 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.

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

7. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the Services Agreement this Agreement shall prevail.

8. Severability. Every provision of this Agreement is intended to be severable. In the event any term, provision, covenant, or condition of this Agreement is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, that illegality or invalidity shall not affect the other terms and provisions of this Agreement, which shall remain binding and enforceable.

9. Entire Agreement. This Agreement contains the entire understanding and agreement of the parties, and there have been no promises, representations, agreements, warranties, or undertakings by either party one to the other, either oral or written, of any character or nature, except as otherwise set forth in this Agreement.

10. Attorneys’ Fees. In the event of a dispute regarding any provision of this Agreement, the prevailing party shall be entitled to collect reasonable attorneys’ fees from the non-prevailing party.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the date written above.

**COVERED ENTITY:**

ABC Company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BUSINESS ASSOCIATE:**

[ Business Associate Name ]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTICE:

This sample agreement includes business associate agreement provisions to help covered entities and business associates more easily comply with business associate contract requirements. The wording should be changed as needed to more accurately reflect the business arrangement and desired objectives. This document addresses concepts and may not be sufficient to result in a binding contract under state or federal laws. This document does not replace consultation with an attorney.