

**TOVA Company
Business Associate Agreement
for Covered Entities**

Definitions

Catch-all definition:

The Capitalized terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

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 agreement, shall mean The TOVA Company.
- 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 agreement, shall mean the individual or organization that owns and operates the Test of Variables of Attention (T.O.V.A.) system.
- C. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Obligations and Activities of Business Associate

Business Associate agrees to:

- A. Not use or disclose Protected Health Information (PHI) other than as permitted or required by 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 PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- C. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including Breaches of unsecured PHI as required at 45 CFR 164.410, and any successful or suspected successful Security Incident of which it becomes aware (a) within ten (10) days of discovery;
- 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 PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- E. Make available PHI in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524 within fifteen (15) days;
- F. Make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by 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 within fifteen (15) days;
- G. 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 within fifteen (15) days;
- H. 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
- I. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

- A. Business Associate may only use or disclose PHI as necessary to aid the Covered Entity in the operation and maintenance of the T.O.V.A. system.
- B. Business Associate may use or disclose PHI as Required By Law.

- C. Business associate agrees to make uses and disclosures and requests for protected health information in compliance with the minimum necessary standard pursuant to 45 CFR § 164.502(b).
- D. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- E. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of 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 Covered Entity.

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.

Permissible Requests by Covered Entity

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.

Term and Termination

- A. Term. The Term of this Agreement shall be effective immediately upon use of the T.O.V.A. system, and shall terminate on the termination of the underlying contract.
- B. Termination for Cause. Both Parties authorize termination of this Agreement by either Party, if one Party determines the other Party has violated a material term of the Agreement. The discovering Party will provide the Party in material violation of this Agreement with an opportunity to cure the violation within 30 days.
- C. Obligations of Business Associate Upon Termination.
- D. 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:
 - a. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - b. 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;
 - c. 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 this Agreement; and
 - d. 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.
- E. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

Miscellaneous

- A. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- B. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.