

This Business Associate Agreement (“BAA”) and the terms and conditions contained herein apply to Customer’s use of those services specified within an Order Form entered into by and between ABILITY Network Inc. (“ABILITY”) and Customer, as expressly incorporated into and made a part of the Order Form by reference therein. By way of execution of the Order Form, both ABILITY, as a Business Associate of Customer, and Customer, as a Covered Entity, have agreed to be bound by this BAA, which shall be effective as of the date of Customer’s signature on the Order Form (“Effective Date”).

ABILITY provides services to Customer pursuant to one or more underlying agreements by and between ABILITY and Customer (“Order Form(s)”), pursuant to which ABILITY may create, receive, maintain, or transmit Protected Health Information (“PHI”) of Customer in order to enable ABILITY to perform one or more services for Customer related Customer’s Treatment, Payment or Health Care Operations.

ABILITY and Customer desire to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 C.F.R. Part 160 and Part 164, Subparts A, C (“Security Rule”), and E (“Privacy Rule”) as well as Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”).

Capitalized terms within this BAA shall have the same meaning as those terms are defined at 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.402 and 164.501. This BAA applies to uses and disclosures of all PHI that ABILITY creates for or on behalf of, or receives from or on behalf of, Customer.

ABILITY and Customer hereby agree as follows:

1. Permitted Uses and Disclosures. ABILITY may use and disclose PHI: (i) in the course of performing services for or on behalf of Customer; (ii) as required or permitted by law, regulation, regulatory agency or by any accrediting body to whom Customer or ABILITY may be required to disclose such PHI; (iii) as set forth in an authorization that complies with HIPAA and HITECH, or (iv) to provide Data Aggregation services, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

Except as otherwise limited in this BAA, ABILITY may use PHI for the proper management and administration of ABILITY or to carry out the legal responsibilities of ABILITY.

Except as otherwise limited in this BAA, ABILITY may disclose PHI for the proper management and administration of ABILITY, provided that disclosures are required by law, or ABILITY obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 ABILITY of any instances of which it is aware in which the confidentiality of the information has been breached.

Acknowledging that ABILITY may disclose information, including PHI, from its other customers to Customer, ABILITY also may disclose PHI from Customer to its other customers, provided such disclosures comply with HIPAA.

ABILITY will not use or disclose PHI other than as permitted or required by this BAA or as Required By Law.

2. ABILITY’s Obligations. ABILITY shall:

- a. ensure, through a written contractual agreement that complies with 45 C.F.R. § 164.314, that its agents and Subcontractors to whom it may provide PHI agree to the same terms and conditions as are applicable to ABILITY;
- b. implement appropriate and reasonable safeguards to prevent use or disclosure of PHI other than as permitted herein, including those safeguards required pursuant to 45 C.F.R. § 164.308, 164.310, 164.312, 164.314, and 164.316, and comply, as applicable, with the requirements of 45 C.F.R. Part 164, Subpart C;
- c. make available to the Secretary of Health and Human Services, ABILITY’s internal practices, books and records relating to the use or disclosure of PHI for purposes of determining Customer’s compliance with HIPAA;
- d. report to Customer and mitigate, to the extent practicable, any harmful effect that is known to ABILITY of uses or disclosures of PHI of which ABILITY becomes aware that do not comply with the terms herein, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware;
- e. to the extent that Customer and ABILITY agree in writing that ABILITY shall maintain PHI as part of a Designated Record Set, ABILITY agrees to provide access to Customer, or to an Individual as directed by Customer, to PHI contained in a Designated Record Set. If an Individual request an electronic copy of PHI maintained electronically in a Designated Record Set, ABILITY agrees to provide access to Customer, or to an Individual as directed by Customer, to PHI in a readable electronic format as agreed to by Customer and the Individual, with respect to the PHI maintained electronically in a Designated Record Set;
- f. make amendments to PHI contained in a Designated Record Set that Customer directs or agrees to pursuant to 45 C.F.R. § 164.526;

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- g. document uses and disclosures of PHI that would be required for Customer to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and, upon Customer's request, provide such information to Customer;
 - h. use Customer's EDI password only as expressly authorized by Customer and only for the submission and retrieval of Customer's EDI transactions. If Customer uses ABILITY for exchange of EDI transactions with their Medicare contractor, this paragraph grants this explicit authorization;
 - i. to the extent ABILITY is to carry out one or more of Customer's obligation(s) under 45 C.F.R. Part 164, Subpart E, ABILITY agrees to comply with the requirements of Subpart E that apply to Customer in the performance of such obligations; and
 - j. make uses and disclosures and requests for PHI consistent with Customer's minimum necessary policies and procedures.
 3. Customer's Obligations. Customer shall:
 - a. notify ABILITY of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect ABILITY's use or disclosure of PHI;
 - b. notify ABILITY of any changes in, or revocation of, permission by an individual to use or disclose PHI to the extent that such changes may affect ABILITY's use or disclosure of PHI;
 - c. notify ABILITY of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect ABILITY's use or disclosure of PHI; and
 - d. request ABILITY to use or disclose PHI only in a manner permissible under HIPAA and HITECH if done by the Customer.
 4. Term and Termination. The term of this BAA shall commence as of the Effective Date and shall terminate when all of the PHI provided by Customer to ABILITY, or created or received by ABILITY on behalf of Customer, is destroyed or, if it is infeasible to destroy the PHI, when protections are extended to such information, as provided herein. Customer may terminate this BAA if ABILITY fails to cure or take substantial steps to cure a material breach of this BAA within thirty (30) days after receiving written notice of such material breach from Customer. If the underlying agreement terminates or expires, ABILITY will maintain Customer's PHI for sixty (60) days in order for Customer to resubmit claims as necessary. Customer's PHI will then be destroyed by ABILITY. If such destruction of PHI is not feasible, ABILITY will continue to abide by the terms set forth herein with respect to such PHI and further uses and disclosures of such PHI will be limited to those purposes that make destruction infeasible. This Section 4 shall survive the termination of this BAA.
 5. Agreement. This BAA constitutes the entire agreement between the parties concerning its subject matter. This BAA may be amended only in writing signed by Customer and ABILITY. The parties agree to take such action to amend this BAA as is necessary to comply with the requirements of HIPAA and HITECH. This BAA and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Minnesota, including all matters of construction, validity and performance. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the parties to comply with HIPAA and HITECH, as applicable.