

[LAW FIRM LETTERHEAD]

[Date]

SAMPLE
FOR ILLUSTRATIVE PURPOSES ONLY

[Name]
[Address]
[Address]
[City, State, Zip]

Re: Disclosure of Protected Health Information -- HIPAA

Dear [Name]:

In the course of our representation of [CLIENT], [CLIENT] may need to disclose materials to [Law Firm] that contain protected health information (PHI) as that term is defined under the regulations implementing the Health Insurance Portability and Accountability Act (HIPAA) 45 C.F.R. § 164.501. This Agreement sets forth the conditions under which [Law Firm] will use or disclose that information, and provides assurance that [Law Firm] will safeguard the PHI that it receives in the course of its representation of [CLIENT], consistent with the standards set forth at 45 C.F.R. § 164.504(e).

I. [Law Firm's] Obligations

1. Except as otherwise stated in this letter, [Law Firm] may use or disclose PHI received from [CLIENT]: (1) to perform functions, activities, or services for, or on behalf of, [CLIENT], provided that such use or disclosure would not violate HIPAA if made by [CLIENT] as a Covered Entity; or (2) as required or permitted by applicable law, rule, regulation, or regulatory agency or by any accrediting or credentialing organization to whom [CLIENT] or [Law Firm] is required to disclose such PHI.

In addition, [Law Firm] may:

- a) use PHI, if necessary, for purposes of its own management and administration or to carry out its legal responsibilities;
- b) disclose PHI, if necessary, if the following requirements are met:
 - i) the disclosure is required by law; or
 - ii) [Law Firm] 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 [Law Firm] of any instances of which it is aware in which the confidentiality of the PHI has been breached, consistent with the standards of 45 C.F.R. § 504(e)(4)(ii).
- c) use PHI to provide Data Aggregation, as defined in 45 C.F.R. § 164.501, services to [CLIENT], as permitted by HIPAA.

[Law Firm] shall not use or disclose PHI for any other purpose not described above or as set forth in Exhibit A

2. [Law Firm] shall take steps to safeguard the PHI that it receives from [CLIENT], including:

- a) using reasonable efforts to maintain the security of the PHI;
- b) ensuring that its agents, including subcontractors, to whom it provides PHI agree to the same restrictions and conditions with respect to such information that apply to [Law Firm] pursuant to this Agreement;
- c) when disclosing PHI as permitted under this Agreement, disclosing only the minimum PHI necessary for the recipient to perform the functions or services for which it is disclosed;
- d) implementing appropriate and commercially reasonable safeguards to prevent use or disclosure of PHI other than as permitted in this Agreement;
- e) reporting to [CLIENT] in writing any use or disclosure of PHI of which it becomes aware that is not in compliance with the terms of this Agreement; and
- f) mitigating, to the extent practicable, any harmful effect that is known to [Law Firm] of a use or disclosure of PHI in violation of the requirements of this Agreement.

3. [INSERT, AS APPROPRIATE] [“Designated Record Set”]

The Parties agree that PHI disclosed to [Law Firm] in the course of its representation of [CLIENT] will not constitute a Designated Record Set as defined in 45 C.F.R. § 164.501, and that [Law Firm] shall not be obligated to provide access to such PHI to third parties pursuant to 45 C.F.R. § 164.524, nor to amend the PHI pursuant to 45 C.F.R. § 164.526.

[OR]

To the extent that the Parties mutually agree in writing that PHI is part of a Designated Record Set, and that such Designated Record Set (or a portion thereof) is to be maintained by [Law Firm], as set forth and agreed to in Schedule A, [Law Firm] shall:

- a) provide access to such PHI, at the request of the [CLIENT] and in the time and manner designated by the [CLIENT], to [CLIENT] or to an individual designated by [CLIENT], in order to meet the requirements of 45 C.F.R. § 164.524; and
- b) make amendments to such PHI as directed or agreed to by [CLIENT] in accordance with the requirements of 45 C.F.R. § 164.526.

4. [Law Firm] shall document all disclosures that it makes of the PHI it receives from [CLIENT], and information related to such disclosures. [Law Firm] shall provide to [CLIENT] or to an Individual, in a time and manner designated by [CLIENT], the information collected, as would be required for [CLIENT] to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

5. If [Law Firm] receives a request from the Department of Health and Human Services (HHS), that [Law Firm] make available its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by [Law Firm] on behalf of [CLIENT], to (HHS) for purposes of determining [CLIENT]’s compliance with the HIPAA Privacy Rule, [Law Firm] shall promptly notify [CLIENT] that it has received such a request. [Upon [Law Firm]’s] receipt of written directive to do so from [CLIENT], [Law Firm] will make the relevant internal practices, books, and records relating to the use and disclosure of PHI available to HHS.

This Agreement shall not be construed to require [Law Firm] to engage in any conduct which would be deemed unprofessional conduct under the laws or ethical requirements applicable to lawyers in any State in which [Law Firm]’s] lawyers representing [CLIENT]

are licensed to practice. To the maximum extent permitted by applicable law, [CLIENT] hereby reserves and retains any and all applicable attorney-client or other privileges in which [CLIENT] has an interest with respect to [Law Firm's] performance of its obligations under this Paragraph. To the maximum extent permitted by applicable law, [Law Firm] hereby reserves and retains any and all applicable work product or other privileges or rights in which [Law Firm] has an interest with respect to [Law Firm's] performance of its obligations under this Paragraph. Nothing in this Paragraph shall be construed to require [Law Firm] to disclose or produce to HHS communications that are subject to attorney-client privilege held by [Law Firm] with respect to legal advice it seeks from other legal counsel. Although [Law Firm] and [CLIENT] are making a good faith effort to achieve conformance of these Terms and Conditions with the requirements of the Privacy Rule, [CLIENT] acknowledges that [Law Firm] has not advised [CLIENT], or represented or warranted to [CLIENT], that these Terms and Conditions, including the procedures outlined in this Paragraph, will be deemed by HHS or a court to satisfy the requirements of the HIPAA Privacy Rule.

II. [CLIENT]'s Obligations

1. [CLIENT] shall provide [Law Firm] with the notice of privacy practices that [CLIENT] produces in accordance with 45 C.F.R. § 164.520, as well as any subsequent changes to the notice of privacy practices.
2. [CLIENT] shall provide [Law Firm] with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect [Law Firm's] permitted or required uses and disclosures.
3. [CLIENT] shall notify [Law Firm] of any restriction to the use of disclosure of PHI that [CLIENT] has agreed to in accordance with 45 C.F.R. § 164.522.

III. Term and Termination

1. The parties' duties under this letter will continue until [INSERT TIME PERIOD] after [Law Firm] has ceased providing services to [CLIENT]. Prior to that date, either party may terminate this Agreement upon a breach of any duties by the other party; provided that the non-breaching party has given written notice of the breach to the breaching party and the breaching party has failed to cure the breach within thirty (30) days after receiving the written notice.
2. Within _____ days after termination of this Agreement, [Law Firm] will cease to use or disclose the PHI provided to it by [CLIENT]. Upon termination, if feasible, [Law Firm] shall return or destroy all PHI received from, or created or received by [Law Firm] on behalf of, [CLIENT] that [Law Firm] still maintains in any form and shall retain no copies of such information. Prior to doing so, [Law Firm] further agrees to recover any PHI in the possession of its subcontractors or agents. If it is infeasible to return or destroy PHI, [Law Firm] shall provide to [CLIENT] notification of the conditions that make return or destruction of PHI infeasible. [Law Firm] shall continue to extend the protections of this HIPAA Amendment to such PHI, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

IV. Miscellaneous.

1. This letter contains the entire agreement of the parties with respect to the protection of PHI disclosed by [CLIENT] to [Law Firm]. This letter may not be modified or amended except by written agreement of the parties. The parties agree to modify the agreements under this letter as necessary to comply with new or modified federal laws, regulations,

judicial decisions or regulatory guidance governing the use or disclosure of PHI. The parties will make good faith efforts to resolve informally any disputes under this letter, and neither party will be liable to the other party for any incidental, consequential, special or punitive damages with respect to the matters addressed in this letter.

2. This Agreement is intended for the sole benefit of [Law Firm] and [CLIENT] and does not create any third party beneficiary rights, except as to the extent that the Privacy Rule validly requires HHS or any other person to be a third party beneficiary to this Agreement.
3. [CLIENT] will not disclose PHI to [Law Firm] except to the extent permitted under the HIPAA Privacy Rule, 45 C.F.R. § 160.500, et seq. [Law Firm] does not undertake in this Agreement to provide legal advice to [CLIENT] regarding whether the Privacy Rule permits any particular disclosure of PHI to [Law Firm]. Any such undertaking by [Law Firm] must be acknowledged by [Law Firm] and will be addressed separately from this Agreement. Although [Law Firm] may discuss with [CLIENT] various requirements of the HIPAA Privacy Rule, [Law Firm] is not providing any legal advice to [CLIENT] regarding this Agreement, including whether this Agreement meets all requirements applicable to [CLIENT] under the HIPAA Privacy Rule.
4. In the event that any provision of the Terms and Conditions are held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

* * * * *

Please do not hesitate to contact _____ at _____ if you have any questions about the sharing of PHI with [Law Firm] or any other matters discussed above. If you are in agreement with the terms of this letter, please sign both copies of the letter furnished to you and return one signed copy to me.

Very truly yours,
[Law Firm]

By

Acknowledged and agreed as of the ____ day of _____, 200__.

By: _____
Name:
Title:
[CLIENT]

EXHIBIT A

**Permitted Uses and Disclosures of
Protected Health Information by [Law Firm]**

[Law Firm] may use and disclose Protected Health Information only for purposes of providing services to [Client]. Such permitted uses and disclosures include the following: