



ATTACHMENT G: Business Associate Agreement

ASRS Group Dental Services
Solicitation Code: BPM001922
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ARIZONA STATE
RETIREMENT SYSTEM
3300 N Central Ave
14th Floor
Phoenix, AZ 85012

This Business Associate Agreement ("Agreement") is made part of the Contract between the Arizona State Retirement System ("ASRS") and the Contractor ("Business Associate" in this Agreement).

For good and valuable consideration, the ASRS and Business Associate agree to be bound to the terms and conditions of this Agreement.

The ASRS and Business Associate agree that all services and activities performed under the Contract shall comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "CFR"), as amended. In the event of conflicting terms or conditions, as it relates to HIPAA, this Agreement shall supersede the Contract.

The ASRS will only consider this Agreement to be fully executed if it is signed by Business Associate without any modifications.

1. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA rules set forth in Title 45, Parts 160 and 164 of the CFR:

Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 2.1. Not use or disclose Protected Health Information ("PHI") other than as permitted or required by this Agreement or as Required by Law.
- 2.2. 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.
- 2.3. Report to the ASRS any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR §164.410, and any Security Incident of which it becomes aware in the following manner:
 - 2.3.1. Reporting. Business Associate shall report to the ASRS any Use or Disclosure of PHI that is not authorized by the Contract, by law, or in writing by the ASRS. Business Associate shall make an initial report to the ASRS not more than twenty-four (24) hours after Business Associate learns of such unauthorized Use or Disclosure. The initial report shall include all of the following information to the extent known to the Business Associate at the time of the initial report:
 - A. A description of the nature of the unauthorized Use or Disclosure, including the number of Individuals affected by the unauthorized Use or Disclosure.
 - B. A description of the PHI used or disclosed.
 - C. The date(s) on which the unauthorized Use or Disclosure occurred.
 - D. The date(s) on which the unauthorized Use or Disclosure was discovered.
 - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner.
 - F. Identify the person(s) who received PHI disclosed in an unauthorized manner.
 - G. A description of actions, efforts, or plans undertaken by the Business associate to mitigate the harm of the unauthorized Disclosure.
 - H. A description of corrective actions undertaken or planned to prevent future similar unauthorized Use or Disclosure.
 - I. An assessment of whether a Breach, as defined in 45 CFR § 164.402, has occurred, including, if necessary, an assessment of the probability of harm.
 - J. Such other information, as may be reasonably requested by the ASRS Privacy Officer.



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Business Associate shall provide the ASRS with supplemental reports promptly as new information becomes available, as assessments and action plans are developed, and as action plans are implemented. In any event, Business Associate shall provide a comprehensive written report including all of the information listed above no later than thirty (30) days after discovery of the unauthorized Use or Disclosure.

2.3.2. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of the Contract.

2.3.3. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, Subcontractor or agent who uses or discloses the ASRS PHI in violation of this Agreement or applicable law.

2.4. 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.

2.5. Make available PHI in a Designated Record Set to the ASRS as necessary to satisfy the ASRS' obligations under 45 CFR § 164.524.

2.6. Make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the ASRS pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the ASRS' obligations under 45 CFR § 164.526.

2.7. Maintain and make available the information required to provide an accounting of Disclosures to the ASRS as necessary to satisfy the ASRS' obligations under 45 CFR § 164.528.

2.8. To the extent Business Associate is to carry out one of more of the ASRS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the ASRS in the performance of such obligation(s).

2.9. Make its internal practices, books and records available to the ASRS for purposes of determining compliance with the HIPAA rules within ten (10) business days of a written request by the ASRS.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Business Associate:

3.1. May only use or disclose PHI as necessary to perform the services and obligations set forth in the Contract.

3.2. May use or disclose PHI as Required by Law.

3.3. Agrees to make Uses and Disclosures and requests for PHI consistent with Minimum Necessary requirements.

3.4. May not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the ASRS, except for the specific Uses and Disclosures set forth below in 3.5 and 3.6.

3.5. May use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

3.6. May provide Data Aggregation services relating to the Health Care Operations of the ASRS.



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4. PROVISIONS FOR THE ASRS TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

The ASRS shall notify Business Associate of:

- 4.1. Any limitation(s) in the ASRS Notice of Privacy Practices under 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- 4.2. 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.
- 4.3. Any restriction on the Use or Disclosure of PHI that the ASRS 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. TERM AND TERMINATION

- 5.1. Term: This Agreement is effective upon the signature of the ASRS, as of the effective date indicated by the ASRS in this Agreement, and shall remain in effect in accordance with Section I.5 (Term of Contract) of the Special Terms and Conditions of the Contract.
- 5.2. Termination for Default: Business Associate authorizes termination of the Contract by the ASRS if the ASRS determines that Business Associate has breached a material term of this Agreement and Business Associate has not cured the breach or ended the violation within the time specified by the ASRS and in accordance with Section I.11 (Termination for Default) of the Special Terms and Conditions of the Contract.
- 5.3. Obligations of Business Associate Upon Termination: Upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate, with respect to PHI received from the ASRS, or created, maintained, or received by Business Associate on behalf of the ASRS, shall:
 - 5.3.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.
 - 5.3.2. Destroy or return to the ASRS all remaining PHI that the Business Associate still maintains in any form.
 - 5.3.3. 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.
 - 5.3.4. 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 this Agreement that applied prior to termination.
 - 5.3.5. Destroy or return to the ASRS 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 and contractual responsibilities.
- 5.4. Survival: The obligations of Business Associate under this Agreement shall survive the termination of the Contract.

6. INDEMNIFICATION AND MISCELLANEOUS

- 6.1. Indemnification: Business Associate shall agree to Section II: Insurance Terms, Section 1 (Indemnification Clause) of the Special Terms and Conditions of the Contract.



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- 6.2. **Exclusive Remedy:** This Agreement shall be the exclusive source of remedy for any claim arising out of the subject matter of this Agreement.
- 6.3. **Successors:** This Agreement shall be binding upon, and inure to the benefit of, any successors and assigns of the ASRS and Business Associate.
- 6.4. **Regulatory References:** A reference in this Agreement to a section in the HIPAA rules means the section as in effect or as amended.
- 6.5. **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 or any other applicable law, in accordance with Section 5.1 (Amendments) of the Uniform Terms and Conditions of the Contract.
- 6.6. **Interpretation:** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA rules.
- 6.7. **Governing Law:** In accordance with Section 2 (Contract Interpretation) of the Uniform Terms and Condition of the Contract, this Agreement and any action related thereto shall be governed by and interpreted under the laws of the State of Arizona.

Business Associate hereby acknowledges receipt and acceptance of this Business Associate Agreement.

Business Associate Signature

Brad Clothier

Printed Name

Executive Vice President / Business Development

Title

The Business Associate Agreement is hereby executed and effective as of _____

ASRS Signature

Printed Name

Title