

SUB-CONTRACTOR BUSINESS ASSOCIATE AGREEMENT

Last Revised: **May 7, 2019**

This Business Associate Agreement (the “Agreement”) is made and entered into by and between (“Business Associate”) and Automation Anywhere, Inc. (“Sub-Contractor”) as of the effective date of the Agreement. The business relationship between Business Associate and Sub-Contractor may involve the use and disclosure of health information that is considered PHI (as defined below) and is protected by federal law. Therefore, to the extent that such PHI is shared between the parties, this Agreement shall apply and shall set forth the party’s obligations with respect to such PHI. The provisions of this Agreement shall become binding on the parties beginning on the date on which PHI is first shared between the parties and shall terminate in accordance with the terms of this Agreement.

1. Definitions.

- Breach. “Breach” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.
- Breach Notification Rule. “Breach Notification Rule” means the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. Parts 160 and 164.
- Electronic Health Record. “Electronic Health Record” shall mean an electronic record of health-related information on an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- Electronic PHI. “Electronic PHI” shall have the same meaning as the term “electronic PHI” at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate or Sub-Contractor from or on behalf of Covered Entity.
- HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the implementation regulations thereunder, including without limitation the Privacy Rule, the Security Rule, and the Breach Notification Rule.
- HIPAA Rules. “HIPAA Rules” means the Privacy Rule (as defined below), the Security Rule (as defined below), and the Breach Notification Rule (as defined above).
- Individual. “Individual” shall have the same meaning as the term “individual” at 45 C.F.R. § 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164.
- Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, and any amendments thereto, limited to the information created, received, maintained, or transmitted by Business Associate or Sub-Contractor from or on behalf of Covered Entity.
- Required By Law. “Required By Law” shall have the same meaning as the term “required by law” at 45 C.F.R. § 164.103.
- Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

- Security Incident. “Security Incident” shall have the same meaning as the term “security incident” at 45 C.F.R. § 164.304.
- Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. Parts 160 and 164.
- Unsecured PHI. “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” at 45 C.F.R. § 164.402.
- Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, the Security Rule, and the Breach Notification Rule.

2. Relationship of Parties.

In the performance of the work, duties and obligations described in this Agreement or under any other agreement between the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

3. Obligations and Activities of Sub-Contractor.

- a) Sub-Contractor agrees to not use or disclose PHI other than as permitted or required by this Agreement, any underlying agreement between the parties, or as Required By Law.
- b) Sub-Contractor will limit requests for and the use and disclosure of PHI to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request, and as applicable, in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Sub-Contractor to perform its obligations to Covered Entity under this Agreement, any underlying agreement, or as Required By Law.
- c) Sub-Contractor agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
- d) Sub-Contractor agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Sub-Contractor shall comply with all requirements of the Security Rule.
- e) Sub-Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Sub-Contractor of a use or disclosure of PHI by Sub-Contractor in violation of the requirements of this Agreement.
- f) Sub-Contractor agrees to report to Business Associate any use or disclosure of PHI not provided for by this Agreement of which it becomes aware as soon as practicable, and in no event later than thirty (30) calendar days. To the extent that Sub-Contractor creates, receives, maintains or transmits Electronic PHI, Sub-Contractor agrees to report as soon as practicable, and in no event later than thirty (30) calendar days, to Business Associate any Security Incident, as determined by Sub-Contractor, involving PHI of which Sub-Contractor becomes aware. Notwithstanding the foregoing, Sub-Contractor and Business Associate acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Business Associate acknowledges and agrees that no additional notification to Business Associate of such unsuccessful Security Incidents is required.

- g) Following Sub-Contractor's discovery of a Breach of Unsecured PHI, Sub-Contractor shall notify Business Associate of the Breach without unreasonable delay, and in no event later than thirty (30) calendar days after Sub-Contractor, or any of its employees or agents, discovered the Breach. Such notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Sub-Contractor to have been, accessed, acquired, used, or disclosed during the Breach and any other information available to Sub-Contractor about the Breach which is required to be included in the notification of the Breach provided to the Individual in accordance with 45 C.F.R. §164.404(c).
- h) In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), Sub-Contractor agrees to obtain satisfactory assurances that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Sub-Contractor agree in writing to the same restrictions and conditions that apply through this Agreement to Sub-Contractor with respect to such information; such assurances shall be documented in a Sub-Contractor Agreement entered into by Sub-Contractor and each subcontractor that creates, receives, maintains, or transmits PHI of behalf of Sub-Contractor. Moreover, Sub-Contractor agrees to ensure any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Electronic PHI received from Business Associate.
- i) Sub-Contractor shall provide access, at the request of Business Associate on behalf of a Covered Entity, to PHI in a Designated Record Set to Business Associate, in order to meet the requirements under 45 C.F.R. § 164.524, in a time and manner mutually acceptable to Sub-Contractor and Business Associate and to the extent applicable to Sub-Contractor.
- j) Sub-Contractor agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that Business Associate, on behalf of a Covered Entity, directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Business Associate, and in a time and manner mutually acceptable to Sub-Contractor and Business Associate and to the extent applicable to Sub-Contractor.
- k) Sub-Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and shall provide such information to Business Associate, on behalf of a Covered Entity, if needed to respond to an individual's request for an accounting, in a time and manner mutually acceptable to Sub-Contractor and Business Associate and to the extent applicable to Sub-Contractor.
- l) Sub-Contractor shall make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Sub-Contractor on behalf of Business Associate, available to the Secretary for purposes of determining Business Associate's or Sub-Contractor's compliance with the Privacy Rule.
- m) To the extent Sub-Contractor is to carry out a Covered Entity's obligations under the Privacy Rule, Sub-Contractor shall comply with the requirements of the Privacy Rule that apply to a Covered Entity in the performance of such delegated obligation.

4. General Use and Disclosure Provisions.

Except as otherwise limited in this Agreement:

- a) Sub-Contractor reserves the right to use PHI for the proper management and administration of Sub-Contractor, to carry out the legal responsibilities of Sub-Contractor, and to provide data aggregation and de-identification services for or on behalf of Business Associate, including to improve its products and services to Business Associate and to develop new products and services for use by Business Associate.
- b) Sub-Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Business Associate provided that such use or disclosure would not violate the Privacy Rule if done by Business Associate. In order to fulfill its responsibilities under this Section, Sub-Contractor shall comply with the Privacy Rule.
- c) Sub-Contractor may disclose PHI in its possession for the proper management and administration of Sub-Contractor, provided that disclosures are Required by Law, or Sub-Contractor obtains reasonable assurances from the third party to whom the information is disclosed that such PHI 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 third party, and the third party notifies Sub-Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Obligations of Business Associate.

- a) Business Associate, on behalf of a Covered Entity, shall notify Sub-Contractor in writing of any limitation(s) in a Covered Entity's notice of privacy practices, to the extent that such limitation may affect Sub-Contractor's use or disclosure of PHI.
- b) Business Associate, on behalf of a Covered Entity, shall notify Sub-Contractor, in writing and in a timely manner, of any change in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect Sub-Contractor's permitted or required use or disclosure of PHI.
- c) Business Associate, on behalf of a Covered Entity, shall notify Sub-Contractor, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI, which Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Sub-Contractor's use or disclosure of PHI.
- d) Business Associate shall have entered into "Business Associate Agreements" with any third parties (e.g., case managers, brokers or third party administrators) to which Business Associate directs and authorizes Sub-Contractor to disclose PHI.

6. Permissible Requests by Business Associate.

Business Associate shall not request Sub-Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by a Covered Entity.

7. Term and Termination.

- a) Term. The term of this Agreement shall commence on the Effective Date, and shall terminate when all of the PHI provided by Business Associate to Sub-Contractor, or created or received by Sub-Contractor on behalf of Business Associate, is destroyed in a manner required by applicable state or federal law, or returned to Business Associate, or, if it is not feasible to return or destroy the PHI, protections are extended to such information for as long as it is maintained, in accordance with the termination provisions in this Section.
- b) Termination for Cause. Upon Business Associate's knowledge of a material breach of this Agreement by Sub-Contractor, Business Associate shall either:

- i) Provide an opportunity for Sub-Contractor to cure the breach or end the violation and terminate this Agreement if Sub-Contractor does not cure the breach or end the violation within the time specified by Business Associate; or
- ii) Immediately terminate this Agreement if Sub-Contractor has breached a material term of this Agreement and cure is not possible.

Sub-Contractor shall ensure that it maintains the termination rights in this Section in any agreement it enters into with a subcontractor pursuant to section 4(h) hereof.

c) Effect of Termination.

- i) Except as provided in paragraph (ii) of this Section, upon termination of this Agreement, for any reason, Sub-Contractor shall return or destroy all PHI received from Business Associate, or created or received by Sub-Contractor on behalf of Business Associate.
- ii) In the event that Sub-Contractor determines that returning or destroying the PHI in a manner required by state or federal law is not feasible, Sub-Contractor shall provide to Business Associate notification of the conditions that make return or destruction not feasible. Upon determination that return or destruction of PHI is not feasible, Sub-Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Sub-Contractor maintains such PHI.

8. Miscellaneous.

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties. Notwithstanding the foregoing, the parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary from time to time for the parties to comply with the requirements of HIPAA, as amended. Business Associate shall provide written notice to Sub-Contractor to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HIPAA or HITECH requires an amendment to this Agreement to comply with HIPAA. The parties agree to negotiate an amendment to the Agreement in good faith; however, either party may terminate this Agreement upon ninety (90) days written notice to the other party if the parties are unable to reach an agreement.
- c) Survival. The respective rights and obligations of Sub-Contractor under Section 8 of this Agreement shall survive the termination of this Agreement, unless expressly stated otherwise.
- d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Business Associate and Sub-Contractor to comply with HIPAA.
- e) Notice. Any notice, report or other communication required under this Agreement shall be in writing and shall be delivered personally, telegraphed, emailed, sent by facsimile transmission, or sent by U.S. mail.

- f) Governing Law. The rights, duties and obligations of the parties to this Agreement and the validity, interpretation, performance and legal effect of this Agreement shall be governed and determined by applicable federal law with respect to the Privacy Rule and the Security Rule and otherwise by the laws of the state of California.