

# HIPAA Business Associate Contract

This Agreement is effective on \_\_\_\_\_, by and between \_\_\_\_\_ herein "Covered Entity" and DefensePro, Inc. herein "Business Associate".

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference.
2. **Prohibition on Unauthorized Use or Disclosure of PHI.** Business Associate shall not use or disclose any PHI received from or on behalf of Covered Entity, except as permitted or required by the Agreement or required by law.
3. **Business Associate's Operations.** Business Associate may use PHI it creates or receives for or from Covered Entity only to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose such PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if:
  - a. The disclosure is required by law; or
  - b. Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
    - i. Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
    - ii. Notify Business Associate (who shall in turn promptly notify Covered Entity) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
4. **PHI Safeguards.** Business Associate shall develop, implement, maintain and use appropriate administrative technical and physical safeguards to prevent the improper use or disclosure of any PHI received from or on behalf of Covered Entity.
5. **Subcontractors and Agents.** If Business Associate is permitted to subcontract any of its responsibilities to another party pursuant to the terms of its agreements with the Covered Entity, Business Associate shall require

each of its subcontractors or agents to whom Business Associate may provide PHI or Health Information received from or on behalf of Covered Entity to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by the Agreement.

6. Access to PHI by Individuals. Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner designed by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to an individual in order to meet the requirements under CFR 164.524. For purposes of this Agreement, the term "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502.
7. Correction of Health Information. At the direction of the Covered Entity, Business Associate shall promptly amend or correct PHI received from or on behalf of Covered Entity.
8. Disclosure Accounting to Individual. So that Covered Entity may meet its HIPAA disclosure accounting obligations:
  - a. Disclosure Tracking. Starting April 14, 2003, Business Associate with record for each disclosure, not excepted from disclosure accounting under Addendum Section (b) below, that Business Associate makes to Covered Entity or a third party of PHI that Business Associate creates or receives for or from Covered Entity (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the PHI disclosed and (iv) a brief statement of the purpose of the disclosure. For repetitive disclosures Business Associate makes to the same person or entity (including the Covered Entity) for a single purpose, Business Associate may provide (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures and (iii) the date of the last of these repetitive disclosures. Business Associate will make this disclosure information available to the Covered Entity promptly upon the Covered Entity's request.
  - b. Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for disclosures of PHI that this Addendum or the Covered Entity in writing permits or requires (i) for the purpose of Covered Entity's treatment activities, payment activities, or health care operations, (ii) to the individual who is the subject of the PHI disclosed or to that individual's personal representative, (iii) to the persons involved in that individual's health care or payment for health care, (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes or (vi) to law enforcement officials or

correctional institutions regarding inmates, or (vii) when the Business Associate has served a Subpoena or signed Authorization demanding release of the records as part of litigation on the Covered Entity.

9. Reporting. Business Associate shall report to Covered Entity any use or disclosure of Individually Identified Health Information not authorized by the Agreement or in writing by Covered Entity (this does not apply when a Subpoena or signed Authorization was presented by the Business Associate for the records). Business Associate shall make the report to Covered Entity's Privacy Official no less than 24 hours after Business Associate learns of such unauthorized use or disclosure. Business Associate's report shall at least: (a) identify the nature of the unauthorized use or disclosure; (b) identify the PHI used or disclosed; (c) identify who made the unauthorized use or received the unauthorized disclosure; (d) identify what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; (e) identify what corrective action business Associate has taken or shall take to prevent future similar unauthorized use or disclosure.
10. Right to Terminate for Breach. Notwithstanding any other agreements between the parties, Covered Entity or Business Associate, in its sole discretion, shall have the right to terminate this Agreement, and any other agreements that exist between the parties, in the event that either party has breached its obligations under this Agreement.
11. Return or Destruction of Health Information. Upon termination, cancellation, expiration or other conclusion of this Agreement (except termination of the agreement because a Subpoena or signed Authorization was used to obtain the records), Business Associate, if feasible, shall return to Covered Entity or destroy all PHI and all Health Information, in whatever form or medium (including in any electronic media under Business Associate's custody or control), that Business Associate received from or on behalf of Covered Entity, including any copies of and any Health Information or compilations derived from and allowing identification of such PHI or such Health Information. Business Associate shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this agreement. Within such thirty (30)-day period, Business Associate shall certify on oath in writing to Covered Entity that such return or destruction has been completed or, if return or destruction is not feasible written justification explaining why such PHI could not be returned or destroyed.
12. Indemnification. The privacy regulations do not require an indemnification provision in a business associate agreement. Therefore, this agreement provides no indemnification by the Business Associate to the Covered Entity.
13. Subpoena or Authorization used. This Agreement does not apply when a Subpoena or Authorization (signed by the Patient) is presented by the

Business Associate to the Covered Entity for a patient's records. The copying of records in compliance with a Subpoena or Authorization is under 45 CFR §164.512 and 45 CFR §164.508 and does not require a Business Associate Contract.

When a Business Associate copies records in connection with a Subpoena to copy records it must provide said records to the attorney who caused the Subpoena to be served and any other party to the litigation that requests a copy in accordance with CCP §2020(d)(5). Therefore, it is agreed that in the case where a Subpoena is used by the Business Associate this contract shall not apply, and the Business Associate will in fact disclose the records in accordance with CCP §2020 and §2025.

14. Fees charged by Covered Entity to Business Associate. When a Subpoena is used by the Business Associate to obtain records from the Covered Entity the fees charged by the Covered Entity shall not exceed those fees listed in California Evidence Code §1563. When the copying of the records is performed by the Business Associate at the Covered Entities place of business those fees shall not exceed \$15.

When a signed Authorization is used by the Business Associate to obtain records from the Covered Entity the fees charged by the Covered Entity shall not exceed those fees listed in California Evidence Code §1158. When the copying of the records is performed by the Business Associate at the Covered Entities place of business those fees shall not exceed \$15.

15. Time for releasing records. When a Subpoena is used by the Business Associate to obtain records from the Covered Entity those records will be released by the Covered Entity for copying on or before the Deposition date listed on the Subpoena.

When a signed Authorization is used by the Business Associate to obtain records from the Covered Entity those records will be released by the Covered Entity for copying within 5 business days from service of the signed Authorization.

COVERED ENTITY

BUSINESS ASSOCIATE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_