


**GUAM MEMORIAL HOSPITAL AUTHORITY  
ADMINISTRATIVE MANUAL**

APPROVED	RESPONSIBILITY	EFFECTIVE DATE	NUMBER	PAGE
	Information Technology Administrator (HIPAA Security Officer)	12/2004	6420-30	1 of 7
<b>TITLE: BUSINESS ASSOCIATE CONTRACTS AND OTHER ARRANGEMENT POLICY</b>				

**PURPOSE:**

The purpose is to obtain satisfactory assurances in accordance with the HIPAA Security Rule that the business associate will appropriately safeguard all electronic protected health information (ePHI).

The purpose is to further document the satisfactory assurances required by the Business Associates Contracts (BAC) and Other Arrangements Standard in the HIPAA Security Rule through a written contract or other arrangement with the business associate that meets the applicable requirements of the Business Associates Contracts and Other Arrangements Standard in the Administrative Safeguards section of the HIPAA Security Rule.

**SCOPE:**

This policy applies to the Guam Memorial Hospital Authority and impacts those business associates that process or have access to ePHI at the Guam Memorial Hospital Authority.

**POLICY:**

Guam Memorial Hospital Authority will identify all authorized support organizations that process or have access to ePHI. Such businesses will include, all existing Business Associate Contract(s) executed by the Guam Memorial Hospital Authority using the Business Associate Agreement Form attached to this policy.

The Guam Memorial Hospital Authority will establish the flow of ePHI to all outside entities and identify how such information is transmitted, and the requirements for processing ePHI at the business associate site.

The Guam Memorial Hospital Authority will review all existing BAC and ensure that all such agreements are modified with Addendums or revised for compliance with the HIPAA Security Rule.

Business associates must be required to report any instance of misuse or unauthorized disclosure to ePHI.

The termination of an agreement with the business associate must result in return or destruction of all ePHI with the business associate.

Reviewed: 01/2006  
 Revised: 02/2006  
 Approved: EMC 2/15/06

Business associate must train all members of their workforce that process or come into contact with ePHI. This training must include awareness of the requirements of the HIPAA Security Rule as well as information about the business associates security policies and procedures

The Guam Memorial Hospital Authority must have the right to audit the business associate in the event of violations related to its ePHI.

The Guam Memorial Hospital Authority must reserve the right to take "reasonable steps" including canceling the BAC without penalty.

If the business associate intends to process or transmit the Guam Memorial Hospital Authority's ePHI outside the United States of America then the Guam Memorial Hospital Authority will be informed of specific details related to such processing or transmission and reserves the right to not authorize any such flow of ePHI.

### **RESPONSIBILITIES:**

The HIPAA Security Officer, under the delegated authority of the Hospital Administrator, will ensure Business Associate Contracts (BAC) are in place for existing as well as new prospective Hardware and Software Support Contractors that has authorized access to process or access ePHI to ensure compliance with this standard. Further, the HIPAA Security Officer will review the flow of ePHI to identify all possible organizations that access ePHI and may be required to execute a BAC or other legal agreement to ensure compliance with the HIPAA Security Rule.

### **COMPLIANCE:**

Failure to comply with this or any other security policy will result in disciplinary actions as per the Sanction Policy 6420-8. Legal actions also may be taken for violations of applicable regulations and laws such as HIPAA.

Business Associate Contracts and Other Arrangement is a standard (164.308 (b)(1)) in the Administrative Safeguards category of the HIPAA Security Rule.

### **FORMS:**

- Business Associate Agreement Form (sample attached)

### **REFERENCES:**

- HIPAA Final Security Rule, 45 CFR Parts 160, 162, and 164, Department of Health and Human Services, <http://www.cms.hhs.gov/hipaa/hipaa2/regulations/security/default.asp>, February 20, 2003.
- CMS, "CMS Information Systems Security Policy, Standards and Guidelines Handbook", CMS, February 2002.
- International Standards Organization (ISO/IEC 17799:2000(E)).

## BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT IS ENTERED INTO BY AND BETWEEN THE GUAM MEMORIAL HOSPITAL AUTHORITY (GMHA), A PUBLIC CORPORATION AND AUTONOMOUS INSTRUMENTALITY OF THE GOVERNMENT OF GUAM, WHOSE ADDRESS 850 GOV. CARLOS G. CAMACHO ROAD, TAMUNING, GUAM 96913 AND <<BUSINESS ASSOCIATE>>, WHOSE ADDRESS IS <<BUSINESS ASSOCIATE ADDRESS>>.

### RECITALS

WHEREAS, GMHA AND BUSINESS ASSOCIATE ARE PARTIES TO AN AGREEMENT (PURCHASE ORDER # \_\_\_\_\_) PURSUANT TO WHICH BUSINESS ASSOCIATE PROVIDES CERTAIN SERVICES TO GMHA AND, IN CONNECTION WITH THOSE SERVICES, GMHA DISCLOSES TO BUSINESS ASSOCIATE CERTAIN INDIVIDUALLY IDENTIFIABLE PROTECTED HEALTH INFORMATION (PHI) THAT IS SUBJECT TO PROTECTION UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996, AS AMENDED FROM TIME TO TIME; AND

WHEREAS, THE PARTIES DESIRE TO COMPLY WITH THE HIPAA STANDARDS FOR THE PRIVACY OF PHI OF PATIENTS OF GMHA; AND

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE RECITALS ABOVE AND THE MUTUAL COVENANTS AND CONDITIONS HEREIN CONTAINED, GMHA AND BUSINESS ASSOCIATE ENTER INTO THIS AGREEMENT TO PROVIDE A FULL STATEMENT OF THEIR RESPECTIVE RESPONSIBILITIES.

### SECTION I – DEFINITIONS

- 1.1 **Definitions.** Unless otherwise provided herein or on Exhibit 1.1. attached hereto, capitalized terms shall have the same meaning as set forth in the HIPAA regulations, 45 CFR Sections 160-103 and 164.501.

### SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1 **PERFORMANCE OF AGREEMENT.** BUSINESS ASSOCIATE, ITS AGENTS AND EMPLOYEES AGREES TO NOT USE OR FURTHER DISCLOSE PHI OTHER THAN AS PERMITTED OR REQUIRED BY THE AGREEMENT OR AS REQUIRED BY LAW.
- 2.2 **SAFEGUARDS FOR PROTECTION OF PHI.** BUSINESS ASSOCIATE AGREES TO USE APPROPRIATE SAFEGUARDS TO PREVENT USE OR DISCLOSURE OF THE PHI OTHER THAN AS PROVIDED FOR BY THIS AGREEMENT.
- 2.3 **REPORTING OF UNAUTHORIZED USE.** BUSINESS ASSOCIATE WILL PROMPTLY REPORT TO GMHA ANY USE OR DISCLOSURE OF THE PHI NOT PROVIDED FOR IN THIS AGREEMENT UPON BECOMING AWARE OF IT; AND WILL INDEMNIFY AND HOLD GMHA HARMLESS FROM ALL LIABILITIES, COSTS AND DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE DISCLOSURE BY BUSINESS ASSOCIATE OF ANY PHI. 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 THIS AGREEMENT.
- 2.4 **USE OF SUBCONTRACTORS.** BUSINESS ASSOCIATE AGREES TO ENSURE THAT ANY AGENT AND/OR SUBCONTRACTOR, TO WHOM IT PROVIDES PHI RECEIVED FROM, OR CREATED OR RECEIVED BY BUSINESS ASSOCIATE ON BEHALF OF GMHA - COVERED ENTITY - AGREES TO THE SAME RESTRICTIONS AND CONDITIONS THAT APPLY THROUGH THIS AGREEMENT TO BUSINESS ASSOCIATE WITH RESPECT TO SUCH INFORMATION.

- 2.5** ACCESS TO PHI. BUSINESS ASSOCIATE AGREES TO PROVIDE ACCESS, AT THE REQUEST OF GMHA, AND IN THE TIME AND MANNER DESIGNATED BY GMHA, TO PROTECTED HEALTH INFORMATION IN A DESIGNATED RECORD SET, TO GMHA OR, AS DIRECTED BY GMHA, TO AN INDIVIDUAL IN ORDER TO MEET THE REQUIREMENTS UNDER 45 CFR SECTION 164.524.
- 2.6** AMENDMENTS BY BUSINESS ASSOCIATE. BUSINESS ASSOCIATE AGREES TO MAKE ANY AMENDMENT(S) TO PHI IN A DESIGNATED RECORD SET THAT THE GMHA DIRECTS OR AGREES TO PURSUANT TO 45 CFR SECTION 164.526 AT THE REQUEST OF GMHA OR AN INDIVIDUAL, AND IN THE TIME AND MANNER DESIGNATED BY GMHA.
- 2.7** ACCESS TO DHHS. BUSINESS ASSOCIATE AGREES TO MAKE INTERNAL PRACTICES, BOOKS AND RECORDS RELATING TO THE USE AND DISCLOSURE OF PHI RECEIVED FROM, OR CREATED OR RECEIVED BY BUSINESS ASSOCIATE ON BEHALF OF, GMHA AVAILABLE TO THE SECRETARY, IN A TIME AND MANNER DESIGNATED BY THE GMHA OR THE SECRETARY, FOR PURPOSES OF THE SECRETARY DETERMINING GMHA'S COMPLIANCE WITH THE PRIVACY RULE.
- 2.8** DOCUMENTATION OF DISCLOSURES. BUSINESS ASSOCIATE AGREES TO DOCUMENT SUCH DISCLOSURES OF PHI AND INFORMATION RELATED TO SUCH DISCLOSURES AS WOULD BE REQUIRED FOR GMHA TO RESPOND TO A REQUEST BY AN INDIVIDUAL FOR AN ACCOUNTING OF DISCLOSURES OF PHI IN ACCORDANCE WITH 45 CFR SECTION 164.528.
- 2.9** ACCOUNTING OF DISCLOSURES. BUSINESS ASSOCIATE AGREES TO PROVIDE TO GMHA OR AN INDIVIDUAL, IN TIME AND MANNER DESIGNATED BY GMHA, INFORMATION COLLECTED IN ACCORDANCE WITH SECTION 2.8 OF THIS AGREEMENT, TO PERMIT GMHA TO RESPOND TO A REQUEST BY AN INDIVIDUAL FOR AN ACCOUNTING OF DISCLOSURES OF PHI IN ACCORDANCE WITH 45 CFR SECTION 164.528. BUSINESS ASSOCIATE SHALL MAINTAIN A PROCESS TO PROVIDE THIS ACCOUNTING OF DISCLOSURES FOR AS LONG AS BUSINESS ASSOCIATE MAINTAINS PHI RECEIVED FROM OR ON BEHALF OF GMHA.
- 2.10** BREACH OR MISUSE OF PHI. BUSINESS ASSOCIATE RECOGNIZES THAT ANY BREACH OF CONFIDENTIALITY OR MISUSE OF INFORMATION FOUND IN AND/OR OBTAINED FROM RECORDS MAY RESULT IN THE TERMINATION OF THIS AGREEMENT AND/OR LEGAL ACTION.

### SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1** GENERAL. EXCEPT AS OTHERWISE LIMITED IN THIS AGREEMENT, BUSINESS ASSOCIATE MAY USE OR DISCLOSE PHI TO PERFORM FUNCTIONS, ACTIVITIES, OR SERVICES FOR, OR ON BEHALF OF, GMHA AS SPECIFIED IN PURCHASE ORDER # \_\_\_\_\_, PROVIDED THAT SUCH USE OR DISCLOSURE WOULD NOT VIOLATE THE PRIVACY RULE IF DONE BY GMHA OR THE MINIMUM NECESSARY POLICIES AND PROCEDURES OF THE GMHA.

### SECTION IV – OBLIGATIONS OF GMHA

- 4.1** GENERAL. WITH REGARD TO THE USE AND/OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE, GMHA AGREES:
- a. TO OBTAIN ANY CONSENT, AUTHORIZATION OR PERMISSION THAT MAY BE REQUIRED BY THE PRIVACY RULE OR APPLICABLE STATE LAWS AND/OR REGULATIONS PRIOR TO FURNISHING KEANE HEALTHCARE SOLUTIONS DIVISION THE PHI PERTAINING TO AN INDIVIDUAL; AND
  - b. THAT IT WILL INFORM KEANE HEALTHCARE SOLUTIONS DIVISION OF ANY PHI THAT IS SUBJECT TO ANY ARRANGEMENTS PERMITTED OR REQUIRED OF GMHA UNDER THE PRIVACY RULE THAT MAY MATERIALLY IMPACT IN ANY MANNER THE USE AND/OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE UNDER THIS AGREEMENT, INCLUDING, BUT

NOT LIMITED TO, RESTRICTIONS ON THE USE AND/OR DISCLOSURE OF PHI AS PROVIDED FOR IN C.F.R. 164.522 AND AGREED TO BY GMHA.

- c. GMHA SHALL NOT REQUEST BUSINESS ASSOCIATE TO USE OR DISCLOSE PHI IN ANY MANNER THAT WOULD NOT BE PERMISSIBLE UNDER THE PRIVACY RULE IF DONE BY GMHA.

#### SECTION V - TERM/TERMINATION

5.1 TERM. THE TERM OF THIS AGREEMENT SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE OF AGREEMENT, AND SHALL TERMINATE WHEN ALL OF THE PHI PROVIDED BY THE GMHA TO BUSINESS ASSOCIATE, OR CREATED OR RECEIVED BY BUSINESS ASSOCIATE ON BEHALF OF GMHA, IS DESTROYED OR RETURNED TO GMHA, OR, IF IT IS INFEASIBLE TO RETURN OR DESTROY PHI, PROTECTIONS ARE EXTENDED TO SUCH INFORMATION, IN ACCORDANCE WITH THE TERMINATION PROVISIONS IN THIS SECTION.

5.2 TERMINATION FOR CAUSE. UPON GMHA'S KNOWLEDGE OF A MATERIAL BREACH BY BUSINESS ASSOCIATE, GMHA SHALL EITHER:

- a. PROVIDE AN OPPORTUNITY FOR BUSINESS ASSOCIATE TO CURE THE BREACH OR END THE VIOLATION AND TERMINATE THIS AGREEMENT IF BUSINESS ASSOCIATE DOES NOT CURE THE BREACH OR END THE VIOLATION WITHIN THE TIME SPECIFIED BY GMHA.
- b. IMMEDIATELY TERMINATE THIS AGREEMENT IF BUSINESS ASSOCIATE HAS BREACHED A MATERIAL TERM OF THIS AGREEMENT AND CURE IS NOT POSSIBLE; OR
- c. IF NEITHER TERMINATION NOR CURE ARE FEASIBLE, GMHA SHALL REPORT THE VIOLATION TO THE SECRETARY.

5.3 EFFECT OF TERMINATION.

- a. EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SECTION, UPON TERMINATION OF THIS AGREEMENT, FOR ANY REASON, BUSINESS ASSOCIATE SHALL RETURN OR DESTROY ALL PHI RECEIVED FROM GMHA OR CREATED OR RECEIVED BY BUSINESS ASSOCIATE ON BEHALF OF GMHA. THIS PROVISION SHALL APPLY TO PHI THAT IS IN THE POSSESSION OF SUBCONTRACTORS OR AGENTS OF BUSINESS ASSOCIATE. BUSINESS ASSOCIATE SHALL RETAIN NO COPIES OF THE PHI.
- b. IN THE EVENT THAT BUSINESS ASSOCIATE AGREEMENT DETERMINES THAT RETURNING OR DESTROYING THE PHI IS INFEASIBLE, BUSINESS ASSOCIATE SHALL PROVIDE TO GMHA NOTIFICATION OF THE CONDITIONS THAT MAKE RETURN OR DESTRUCTION OF PHI IS INFEASIBLE, BUSINESS ASSOCIATE 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 INFEASIBLE, FOR SO LONG AS BUSINESS ASSOCIATE MAINTAINS SUCH PHI.

#### SECTION VI - MISCELLANEOUS

6.1 REGULATORY REFERENCES. A REFERENCE IN THIS AGREEMENT TO A SECTION IN THE PRIVACY RULE MEANS THE SECTION AS IN EFFECT OR AS AMENDED.

6.2 AMENDMENT. THE PARTIES AGREE TO TAKE SUCH ACTION AS IS NECESSARY TO AMEND THIS AGREEMENT FROM TIME TO TIME AS IS NECESSARY FOR GMHA TO COMPLY WITH THE REQUIREMENTS OF THE PRIVACY RULE AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW NO. 104-191.

6.3 SURVIVAL. THE RESPECTIVE RIGHTS AND OBLIGATIONS OF BUSINESS ASSOCIATES UNDER SECTION 5.3.B OF THIS AGREEMENT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.4 INTERPRETATION. ANY AMBIGUITY IN THIS AGREEMENT SHALL BE RESOLVED TO PERMIT GMHA TO COMPLY WITH THE PRIVACY RULE.

EFFECTIVE DATE OF AGREEMENT

THIS AGREEMENT SHALL TAKE EFFECT UPON THE DATE IT IS SIGNED BY ALL PARTIES HERETO.

**APPROVED:**

\_\_\_\_\_  
SIGNATURE (FOR BUSINESS ASSOCIATE)

\_\_\_\_\_  
PRINTED NAME (FOR BUSINESS ASSOCIATE)  
(BUSINESS ASSOCIATE COMPANY NAME)

DATE: \_\_\_\_\_

\_\_\_\_\_  
PETERJOHN D. CAMACHO, MPH  
HOSPITAL ADMINISTRATOR/CEO  
GUAM MEMORIAL HOSPITAL AUTHORITY

DATE: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
SETH FORMAN  
LEGAL COUNSEL  
GUAM MEMORIAL HOSPITAL AUTHORITY

DATE: \_\_\_\_\_

## **EXHIBIT 1.1 DEFINITIONS**

**BUSINESS ASSOCIATE** – THE TERM BUSINESS ASSOCIATE SHALL MEAN THE ENTITY LISTED IN THE FIRST PARAGRAPH OF THIS AGREEMENT THAT IS FURNISHING SERVICES TO GUAM MEMORIAL HOSPITAL AUTHORITY (GMHA).

**GMHA** – SHALL MEAN THE COVERED ENTITY GUAM MEMORIAL HOSPITAL AUTHORITY LISTED IN THE FIRST PARAGRAPH OF THIS AGREEMENT THAT IS RECEIVING SERVICES FROM BUSINESS ASSOCIATE.

**HIPAA** – THE TERM “HIPAA” SHALL MEAN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, AS AMENDED FROM TIME TO TIME.

**INDIVIDUAL** – THE TERM “INDIVIDUAL” SHALL HAVE THE SAME MEANING AS THE TERM “INDIVIDUAL” IN 45 CFR SECTION 164.501 AND SHALL INCLUDE A PERSON WHO QUALIFIES AS A PERSONAL REPRESENTATIVE IN ACCORDANCE WITH 45 CFR SECTION 164.502(G).

**MATERIAL ALTERATION** – THE TERM “MATERIAL ALTERATION” SHALL MEAN ANY ADDITION, DELETION OR CHANGE TO THE PHI OF ANY SUBJECT OTHER THAN THE ADDITION OF INDEXING, CODING AND OTHER ADMINISTRATIVE IDENTIFIERS FOR THE PURPOSE OF FACILITATING THE IDENTIFICATION OR PROCESSING OF SUCH INFORMATION.

**PRIVACY RULE** – THE TERM “PRIVACY RULE” SHALL MEAN THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AT 45 CFR PART 160 AND PART 164, SUBPARTS A AND E.

**PROTECTED HEALTH INFORMATION OR PHI** – THE TERM “PROTECTED HEALTH INFORMATION” OR “PHI” SHALL HAVE THE SAME MEANING AS THE TERM “PROTECTED HEALTH INFORMATION” IN 45 CFR SECTION 164.501, LIMITED TO THE INFORMATION CREATED OR RECEIVED BY BUSINESS ASSOCIATE FROM OR ON BEHALF OF GMHA.

**REQUIRED BY LAW** – THE TERM “REQUIRED BY LAW” SHALL HAVE THE SAME MEANING AS THE TERM “REQUIRED BY LAW” IN 45 CFR SECTION 164.501.

**SECRETARY** – THE TERM “SECRETARY” SHALL MEAN THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OR HIS/HER DESIGNEE.

**DHHS** – THE TERM “DHSS” SHALL MEAN THE U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

**UNDERLYING AGREEMENT** – THE TERM “UNDERLYING AGREEMENT” SHALL MEAN THAT CERTAIN AGREEMENT BY WHICH - BUSINESS ASSOCIATE - PROVIDES CERTAIN SERVICES TO GMHA COVERED ENTITY AND, IN CONNECTION WITH THOSE SERVICES, GMHA DISCLOSES TO - BUSINESS ASSOCIATE- CERTAIN INDIVIDUALLY IDENTIFIABLE PROTECTED HEALTH INFORMATION THAT IS SUBJECT TO PROTECTION UNDER HIPAA.