



Business Associate Agreement for Vocera Solutions
Territory: United States

1. **Introduction.** Vocera Communications, Inc. and/or its corporate affiliates ("Vocera") provide certain products, and may provide related services, to End User. In performing these services, Vocera may have access to certain individually identifiable information ("Protected Health Information" or "PHI") including electronic Protected Health Information ("ePHI"). Vocera and End User desire to enter into an agreement regarding the use, disclosure and confidentiality of Protected Health Information and to comply with the requirements to maintain a business associate agreement under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") as a part of the American Recovery and Reinvestment Act of 2009.

2. **Definitions.** As used in these provisions, the following terms shall have the meanings set forth below.

"Breach" shall have the meaning set forth at 45 C.F.R. §164.402.

"Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

"Privacy Standards" of "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 and amendments thereto.

"Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to that information created, transmitted, maintained or received by Vocera from or on behalf of End User.

"Required by Law" shall have the same meaning as "required by law" in 45 C.F.R. §164.501.

"Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

"Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 164, Subpart C and amendments thereto.

"Unsecured Protected Health Information" shall have the meaning set forth at 45 C.F.R. §164.402.

Other terms used (whether or not capitalized) but not otherwise defined in these provisions shall have the same meaning as those terms under HIPAA, as amended and supplemented by the HITECH Act.

3. **Use and Disclosure of Protected Health Information.** Vocera shall not use or disclose PHI in any manner outside the scope of the business relationship entered into by and between Vocera and End User or in any manner that would constitute a violation of the Privacy Standards if used by End User in such a manner, except that Vocera may use and/or disclose PHI (i) for the proper management and administration of Vocera, provided that if Vocera discloses PHI it shall obtain reasonable assurances from the person to whom it is disclosing such information that the information will be held confidentially and only further used and disclosed as Required By Law or for the purposes for which it was disclosed to the person and the person notifies Vocera of any instances of which it is aware in which the confidentiality of the information has been breached, (ii) to provide data aggregation services relating to the health care operations of End User, (iii) in a

manner permitted or required pursuant to the agreement between the parties for Vocera's services and (iv) as Required by Law.

4. **Fulfilling End User Obligations.** To the extent that Vocera is to carry out one or more of End User's obligations under Subpart E of 45 C.F.R. Part 164, Vocera agrees that it shall comply with the requirements of Subpart E that apply to End User in the performance of such obligations.
5. **Security Rule; Safeguards Against Misuse of Information.** Vocera acknowledges that it is required, and Vocera hereby covenants, to comply directly with the Security Rule to the extent applicable to Vocera and required under the HITECH Act. Vocera confirms its agreement to implement appropriate administrative, physical and technical safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to these terms and conditions herein and to reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains or transmits by or on behalf of End User in accordance with the Security Rule.
6. **Reporting of Improper Disclosures and Security Breaches.** In the event Vocera becomes aware, or reasonably should have known, of any use or disclosure of the Protected Health Information received from End User not permitted herein, or any Security Incident resulting in a Breach of Unsecured Protected Health Information, Vocera shall promptly report such incident to End User and, to the extent possible, provide End User with the identity of the affected individual(s) and such other information as required by 45 C.F.R. 164.412. The parties agree that this section shall constitute notice by Vocera to End User of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice or report to End User shall be required.
7. **Agreements by Third Parties.** Vocera shall enter into an agreement with any agent or subcontractor who will have access to PHI pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Vocera hereunder with respect to such PHI. Vocera shall ensure that any agent, including a subcontractor, to whom it provides PHI agrees to implement reasonable and appropriate safeguards to protect the PHI.
8. **Access to Information.** Vocera shall make available to End User the PHI for so long as such information is maintained by Vocera in the Designated Record Set in accordance with 45 C.F.R. § 164.524.
9. **Availability of Protected Health Information for Amendment.** For so long as PHI is maintained by Vocera in the Designated Record Set, Vocera shall provide such information to End User for amendment and incorporate any such amendments in the as required by 45 C.F.R. §§ 164.524 and 164.526.
10. **Accounting of Disclosures.** Upon notice by End User to Vocera that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Vocera shall make available to End User such information as is in Vocera's possession and is required for End User to make the accounting required by 45 C.F.R. § 164.528.
11. **Availability of Books and Records.** Vocera hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Vocera on behalf of, End User available to the Secretary for purposes of determining End User's and Vocera's compliance with the Privacy Standards and the Security Rule.

12. **HIPAA/HITECH Compliance.** It is the express intention of the parties that these provisions comply with the respective obligations of Vocera and End User under HIPAA, as amended by the HITECH Act, which must be recited in a business associate agreement, and these provisions shall be construed to the greatest extent possible to ensure such compliance. To the extent these provisions does not fully recite any provision required to be incorporated by either HIPAA or the HITECH Act, Vocera and End User intend that such provision be incorporated herein by reference to HIPAA and the HITECH Act.
13. **Term and Termination.** This Agreement shall be effective throughout the term of Vocera's access to PHI. However, End User may terminate this Agreement, if End User reasonably determines that Business Associate has violated a material term of the Agreement, and upon written notice to Business Associate of such violation, Business Associate has failed within a thirty (30) day timeframe to reasonably end the violation or cure the breach. Upon termination of this Agreement for any reason, Business Associate shall use reasonable efforts to return or destroy all PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit its use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.
14. **Governing Law.** This BAA is governed by the laws of Delaware, excluding its principles of conflict of laws and in any claim hereunder, the parties consent to the non-exclusive jurisdiction of, and venue in, the state and federal courts situated in Delaware.
15. **Entire Agreement.** Unless the parties otherwise mutually agree in writing to a separately executed Business Associate Agreement, these provisions contain the entire agreement between the parties hereto with respect to the confidentiality of PHI and supersedes all prior written or unwritten arrangements or understandings with respect thereto. All parties represent that they are not relying on any representation, statement, or action by any other party except as expressly stated herein. These provisions may not be modified, amended, or revoked, except in a writing signed by all parties; provided that a further amendment that addresses only the obligations of Vocera in furtherance of compliance with HIPAA or other applicable law may be executed by Vocera alone. This provision may not be orally waived. Any ambiguity in these provisions shall be resolved to permit both the Vocera and End User to comply with HIPAA and the HITECH Act. The parties hereto agree to take such action as is necessary to further amend these provisions from time to time as is necessary for End User and/or Vocera to comply with the requirements of HIPAA, including without limitation the Privacy Rule, Security Rule and/or the HITECH Act and further amendments to any of the foregoing. These provisions are intended to be incorporated into and supplemental to End User License Agreement and Supplemental Terms and Conditions for Vocera Solutions entered into by and between Vocera and End User. Any different or additional term preprinted on any End User Purchase Order or similar document are hereby rejected, notwithstanding any term set forth therein to the contrary.

16. **Notices.** Any notice required to be given hereunder shall be in writing and shall be given by facsimile or email (confirmed by regular mail), personal delivery (including by professional courier), or mailing (by first class mail, return receipt requested). Notices to Vocera shall be sent as follows:

Address:	Vocera Communications, Inc. Attn: Law Department 525 Race Street San Jose, CA 95126-3495 United States
Telephone:	408-882-5990
Facsimile:	408-882-5901
Email	LawDepartment@vocera.com

Notices to End User shall be sent to any address specified in a written Agreement between the parties. In the case of personal delivery, notice shall be deemed to have been given upon actual receipt. In the case of email or facsimile, notice shall be deemed to have been given upon the date the transmitting machine confirms such transmission. In the case of mailing, such notice shall be deemed to have been given seven business days after such mailing.

17. **No Third Party Beneficiaries.** This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party will be considered a third party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.