HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement (the "Agreement") is executed by the parties on the dates shown beneath their respective signature lines, but is effective as of _____ __, 2014 (the "Effective Date") by and between _____ ("Covered Entity") and doForms, Inc. ("Business Associate").

WHEREAS, Business Associate may maintain, transmit create or receive data for or from Covered Entity that constitutes Protected Health Information (as defined at 45 CFR §160.103) to perform tasks on behalf of Covered Entity;

WHEREAS, Covered Entity is or may be subject to the requirements of 42 U.S.C. 1320d *et seq*. enacted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and the implementing regulations set forth at 45 CFR Parts 160, 162 and 164 ("HIPAA Regulations"). As used herein, "PHI" refers to Protected Health Information maintained, transmitted, created or received by Business Associate for or from Covered Entity.

WHEREAS, to the extent required by the HIPAA Regulations and applicable state law, Business Associate is or may be directly subject to certain privacy and security obligations and penalty provisions of HIPAA, HITECH, the HIPAA Regulations and state law.

NOW, THEREFORE, the parties agree as follows:

1. Business Associate may use and disclose PHI only as expressly permitted or required by this Agreement or as required by law. Business Associate may use or disclose PHI as required to perform **[*use the following if a written service agreement exists:*** its obligations under any underlying service agreements (collectively, "Service Agreement") between the parties to perform certain services as described in the Service Agreement ("Services")**]** [***use the following if there is NOT a written service agreement in place:*** the following services on behalf of Covered Entity: _____. (the "Services")**]** , provided that Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the HIPAA Regulations if done by Covered Entity. Without limiting the generality of the foregoing, Business Associate shall not sell PHI or use or disclose PHI for purposes of marketing or fundraising, as defined and proscribed in the HIPAA Regulations, HITECH and applicable state law. Business Associate shall limit its uses and disclosures of, and requests for, PHI (i) when practical, to the information making up a limited data set (as set forth at 45 CFR § 164.514); and (ii) in all other cases subject to the requirements of 45 CFR §164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request. To the extent Covered Entity notifies Business Associate of a restriction request granted by Covered Entity that would limit Business Associate's use or disclosure of PHI, Business Associate will comply with the restriction. To the extent Business Associate is to carry out an obligation of Covered Entity under the HIPAA Regulations, Business Associate shall comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligation.

2. Business Associate agrees to use and maintain reasonable and appropriate administrative, technical and physical safeguards to protect PHI from uses or disclosures not permitted by this Agreement, including, but not limited to, maintaining policies and procedures to detect, prevent or mitigate identity theft based on PHI or information derived from PHI. In addition, Business Associate agrees to comply with the applicable requirements of 45 CFR Part 164, subpart C of the HIPAA Regulations with respect to electronic PHI and any guidance issued by the Secretary of the Department of Health and Human Services ("HHS"). Business Associate specifically agrees to employ multiple security mechanisms to ensure the confidentiality, integrity and availability of all electronic PHI, including, but not limited to, authentication controls, authorization controls, audit controls and encryption.

3. To the extent Business Associate becomes aware of or discovers any use or disclosure of PHI in violation of this Agreement, any Security Incident (as defined at 45 CFR §164.304) any Red Flag (as defined at 16 CFR §681.2(b)) related to any individual who is the subject of PHI, and any Breach of Unsecured Protected Health Information (both as defined at 45 CFR §164.402), Business Associate shall promptly report such use, disclosure, incident, Red Flag or breach to Covered Entity. All reports of Breaches shall be made within ten (10) business days of Business Associate discovering the Breach and shall include the information specified at 45 CFR § 164.410. Business Associate shall mitigate, to the extent practicable, any harmful effect known to it of a use or disclosure of PHI by Business Associate not permitted by this Agreement. Business Associate shall promptly reimburse Covered Entity all reasonable costs incurred by Covered Entity with respect to providing notification of and mitigating a Breach involving Business Associate, including but not limited to printing, postage costs and toll-free hotline costs.

4. In accordance with 45 CFR §§ 164.308(b)(2) and 164.502(e)(1)(i), Business Associate shall ensure that each subcontractor or agent that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees in writing to be bound by the same restrictions, terms and conditions that apply to Business Associate pursuant to this Agreement.

5. In accordance with 45 CFR §164.524 and within fifteen (15) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set (as defined at 45 CFR §164.501), Business Associate shall make available to Covered Entity such PHI in the form requested by Covered Entity. If the requested PHI is maintained electronically, Business Associate shall provide a copy of the PHI in the electronic form and format requested by the individual, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by Covered Entity and the individual. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall within ten (10) days forward such request to Covered Entity. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

6. In accordance with 45 CFR §164.526 and within fifteen (15) days of receipt of a request from Covered Entity for the amendment of an individual's PHI contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR §164.526. In the event a request for an amendment is delivered directly to Business Associate, Business Associate shall within ten (10) days of receiving such request forward the request to Covered Entity.

7. Except for disclosures of PHI by Business Associate that are excluded from the accounting obligation as set forth at 45 CFR §164.528 or regulations issued pursuant to HITECH, Business Associate shall record for each disclosure the information required to be recorded by covered entities pursuant to 45 CFR §164.528. Within twenty (20) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity, or if requested by Covered Entity, to the individual, the information required to be maintained pursuant to this Section 7. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within ten (10) days forward such request to Covered Entity.

8. At Covered Entity's or HHS' request, Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to HHS for purposes of determining compliance with the HIPAA Regulations.

9. Business Associate is not authorized to use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity, provided that Business Associate may:

a. use the PHI for its proper management and administration and to carry out its legal responsibilities.

b. disclose PHI for its proper management and administration and to carry out its legal responsibilities, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the recipient that the PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and the recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

d. aggregate the PHI in its possession with the Protected Health Information of other covered entities that Business Associate has in its possession through its capacity as a business associate to other covered entities, provided that the purpose of such aggregation is to provide Covered Entity with data analysis relating to the health care operations of Covered Entity.

e. use PHI to create de-identified information, provided that the de-identification conforms to the requirements of 45 CFR § 164.514(b).

10. If Business Associate conducts standard transactions (as defined in 45 CFR Part 160) for or on behalf of Covered Entity, Business Associate will comply and will require by written contract each agent or contractor (including any subcontractor) involved with the conduct of such standard transactions to comply, with each applicable requirement of the HIPAA Regulations (as set forth at 45 CFR Parts 160 and 162). Business Associate will not enter into, or permit its agents or contractors (including subcontractors) to enter into, any trading partner agreement in connection with the conduct of standard transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element or segment in a standard transaction;

(ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the standard transaction's implementation specification or is not in the standard transaction's implementation specification; or (iv) changes the meaning or intent of the standard transaction's implementation specification. Business Associate agrees to participate in any test modification conducted by Covered Entity in accordance with the HIPAA Regulations.

11. **[*use the following if a written service agreement exists:*** This Agreement shall be effective as the Effective Date and shall remain in effect until the Service Agreement is terminated or expires. Either party may terminate this Agreement and the Service Agreement effective immediately if it determines that the other party has breached a material provision of this Agreement and failed to cure such breach within thirty (30) days of being notified by the other party of the breach. If the non-breaching party determines that cure is not possible, such party may terminate this Agreement and the Service Agreement effective immediately upon written notice to other party. If termination is not feasible, the non-breaching party shall report the breach to HHS. The parties understand and agree that termination of this Agreement shall constitute a default by Business Associate under the Service Agreement.**]**

[*use the following instead if there is NOT a written service agreement in place*: This Agreement shall be effective as of the Effective Date and shall remain in effect until Business Associate ceases to provide the Services to Covered Entity. Either party may terminate this Agreement effective immediately if it determines that the other party has breached a material provision of this Agreement and failed to cure such breach within thirty (30) days of being notified by the other party of the breach. If the non-breaching party determines that cure is not possible, such party may terminate this Agreement effective immediately upon written notice to other party. If termination is not feasible, the non-breaching party shall report the breach to HHS. The parties understand and agree that termination of this Agreement shall automatically terminate the relationship whereby Business Associate performs the Services on behalf of the Covered Entity.**]**

12. Upon termination of this Agreement, Business Associate shall either return or destroy, at no cost to Covered Entity, all PHI that Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement shall survive termination of this Agreement, and Business Associate shall only use or disclose such PHI solely for such purpose or purposes which prevented the return or destruction of such PHI.

13. Nothing in this Agreement shall be construed to create any rights or remedies in any third parties or any agency relationship between the parties. To the extent Business Associate is acting as a business associate under the HIPAA Regulations, Business Associate shall be subject to the penalty provisions specified in HITECH. Upon the effective date of any final regulation or amendment to final regulations promulgated by HHS with respect to PHI, this Agreement will be deemed to be automatically amended such that the obligations imposed on the parties remain in compliance with such regulations. The terms and conditions of this Agreement shall override and control any conflicting term or condition of any agreement between the parties with respect to the Services **[*include the following if a written service agreement exists:*** including the Service Agreement**]**, and all non-conflicting terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below.

For Covered Entity		For Business Associate	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____