

## Sample Business Associate Contract

For guidance in determining if your organization should enter into a business associate contract, please review the FVPPF's HPA privacy regulations summary *FREQUENTLY ASKED QUESTIONS: THE HIPAA PRIVACY REGULATIONS (for Domestic Violence Service Agencies)*, part II. *Are you required to sign a business associate contract?*

If your organization enters into a business associate contract, you should consider referencing your state's domestic violence law(s) that address confidentiality for victims of domestic violence in the contract, particularly if your domestic violence law is more favorable to the protection of privacy rights.

Below is sample language that could be included in the contract. It is important that you consult with your organization's legal counsel prior to signing any business associate agreement.

### Sample Language

HIPAA specifically recognizes that provisions of state law more favorable to the protection of privacy rights shall supercede HIPAA provisions.

The covered entity specifically recognizes that **(insert your state)** law includes the **(reference your state domestic violence law(s) and the specific section(s) that provide for confidentiality)**. That provision of state law protects disclosures to and from victims of domestic violence to **(insert the specifics of what and who your state law(s) protect, i.e. domestic violence counselors/advocates and co-participants in the course of the counseling relationship)**.

Nothing in the contract shall require the business associate to violate any terms of the provisions of the **(reference your state domestic violence law(s) and the specific section(s) that provide for confidentiality)** as related to the domestic violence confidentiality privilege. Furthermore, the covered entity agrees to protect that same domestic violence confidentiality privilege to the extent that such domestic violence privilege applies to the covered entity directly or as a co-participant with the business associate in domestic violence matters.

The parties agree that the domestic violence confidentiality privilege shall control in the event of any conflict between the provisions of the business associate contract and the **(reference your state domestic violence law(s) and the specific section(s) that provide for confidentiality)** with regard to access, disclosure or cooperation, obligations of the business associate, permitted uses and disclosures by the business associate, third parties, independent contractors, or any other situation resulting in the disclosure of information protected by the domestic violence confidentiality privilege.