

# HIPAA & BUSINESS ASSOCIATES

In order to ensure ongoing compliance with HIPAA, we must ensure “purchases” of services or software include the HIPAA Business Associate Agreement (BAA) when required by law. “Purchases” do not require the exchange of money—the software or service may be provided for free and still trigger the compliance requirement of a BAA.

## Who is a business associate?

When contemplating the use of a service or software provider, ETSU Personnel must determine the following:

1. In the performance of the service or use of the software, will the other party **create** protected health information on behalf of ETSU?
2. In the performance of the service or use of the software, will the other party **receive** protected health information on behalf of ETSU?
3. In the performance of the service or use of the software, will the other party **maintain** protected health information on behalf of ETSU?
4. In the performance of the service or use of the software, will the other party **transmit** protected health information on behalf of ETSU?

If you answer YES to any of the above, the other party is likely a business associate.

## The person or entity is a business associate, now what?

1. Execute the BAA
2. Add the business associate to the Department's BAA tracking sheet

For compliance purposes, we must execute a business associate agreement using the ETSU BAA template. We must also track the details of the business associate relationship using the ETSU BAA Tracking Template.

A BAA must be executed simultaneously with the underlying contract for service or software. If there will be no underlying contract, the BAA must be executed as a standalone agreement.

***Execution of the BAA prior to allowing the other party to create, receive, maintain, or transmit ETSU protected health information is required by law.***

Exchange of ETSU protected health information with a business associate absent the required BAA generally constitutes a breach that is reportable to the Office of Civil Rights, which can result in substantial fines and penalties.

***Just because a service or software provider states that they are “HIPAA Compliant” does not mean they are, nor does such a statement take the place of the required BAA.***

## Common examples of business associates of include the following:

- Electronic Medical Records Software
- Billing or Collection Companies
- Telehealth Software

- Communication Software and Portals
- Internet Storage Solutions/Cloud Providers
- Transcriptionists
- Attorneys
- Accountants
- Document Storage and Disposal Companies

### Questions?

There are of course some exceptions. If you have any questions as to whether or not a service or software provider is a business associate the ETSU HIPAA Compliance Office should be consulted before moving forward.