HIPAA/HITECH Business Associate Decision Tree

1. Is protected health information (PHI) being disclosed to a person or entity other than in the capacity as a member of the covered entity’s workforce?
   - NO
   - YES

2. Is the PHI being disclosed to a health care provider for treatment purposes (e.g., primary/referring physician, contract physicians or specialists, contract nursing staff, contract rehab staff, ambulance, home health, dentist, etc.)?
   - NO
   - YES

3. Is the PHI being disclosed to a health plan for payment purposes, or to a health plan sponsor with respect to disclosures by a group health plan?
   - NO
   - YES

4. Is the PHI being disclosed to a government agency pursuant to an official investigation (e.g., CMS, OCR, OSHA, FDA, health department, etc.)?
   - NO
   - YES

5. Is the PHI being disclosed to another covered entity that is part of an organized health care arrangement in which the originating covered entity participates?
   - NO
   - YES

6. Does the other person or entity create, receive, maintain or transmit PHI for a function or activity regulated by HIPAA, including: claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities, billing, benefits management, practice management, and repricing?
   - NO
   - YES

7. Does the other person or entity provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services where the provision of such services involves disclosure of PHI to the person or entity?
   - NO
   - YES

8. Will the other person or entity be able to access PHI on a routine basis, and/or is there a possibility that the PHI in the person or entity’s custody or control could be compromised (e.g., data storage vendor, document shredding company, or other, etc.)?
   - NO
   - YES
   - Business associate agreement is NOT needed.
   - YES
   - Business associate agreement is needed.

Entities specifically included under HITECH:
- Health information organizations
- E-prescribing gateways
- Data transmission vendors with routine access to PHI
- Personal health record vendors that offer a PHR to individuals on behalf of a covered entity
- Subcontractors that create, receive, maintain, or transmit PHI for or on behalf of a business associate