

BUSINESS ASSOCIATE AGREEMENT

Parties

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made by and between _____ ("Covered Entity") represented herein by _____ and _____ ("Business Associate"), represented herein by _____.

Recitals

WHEREAS, because of its activity, Covered Entity is entrusted with medical records and information pertaining to patients that needs to be protected against destruction, privacy, and security breaches,

WHEREAS patients' information is regulated by the Health Insurance Portability and Accountability Act of 1996 and related regulations collectively referred to as the "HIPAA Regulations".

WHEREAS Covered Entity desires to hire Business Associate in an independent contractor capacity to perform certain services (the underlying agreement) and that the performance of Business Associate's obligation under the underlying agreement may include disclosure from Covered Entity to Business Associate of certain information constituting Protected Health Information ("PHI").

WHEREAS Covered Entity represents and warrants that it will make disclosures of PHI, as permitted under the HIPAA Regulations, to Business Associate.

WHEREAS upon disclosure by Covered Entity of any PHI to Business Associate, this Agreement will become effective and both parties will protect the privacy and provide for the security of PHI in accordance with the Health Insurance Portability and Accountability Act of 1996 and related regulations collectively referred to as the "HIPAA Regulations" and other applicable laws.

AFTER WHAT THE PARTIES HAVE AGREED AS FOLLOWS:

A. Definitions:

- a. **Business Associate:** The party, its employees, directors, officers, and sub-contractors performing certain services \ delivering certain goods to Covered Entity pursuant to the terms a separate agreement between the parties depicting Business Associate's scope of work \ deliverables.
- b. **Covered Entity:** The party, its employees, directors, and officers entrusted with personal healthcare information as defined in the Health Insurance Portability and Accountability Act of 1996 and related regulations collectively referred to as the "HIPAA Regulations" and other applicable laws.
- c. **Effective Date:** from the following dates: the date of this agreement, the date of the underlying agreement, the date of the first PHI disclosure made by Covered Entity to Business Associate, whichever happens first.

- d. **HIPAA regulations reference:** Unless otherwise specified in this Agreement, all capitalized terms used herein shall have the meanings attributed to them in the HIPAA Regulations.
- e. **Underlying Agreement:** is the agreement between the parties that depicts the scope of the work to be performed \ deliverables by Business Associate.

B. Term and Termination:

This Agreement shall become effective on the Agreement Effective Date and shall expire when all of the PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity.

Should the Covered Entity determine that Business Associate has violated a material term of this Agreement, Business Associate agrees that the Underlying Agreement may be concurrently terminated by Covered Entity. Such termination shall be deemed a termination for cause.

Covered Entity acknowledges that Business Associate may terminate the Underlying Agreement as set forth in said underlying agreement.

C. Business Associate's responsibilities and commitments:

a. **Business Associate may only use or disclose PHI as permitted or required under this Agreement and \ or applicable law or regulation, including:**

- i. For Business Associate's proper management and administration and to fulfill any of its present or future legal responsibilities,
- ii. For the purpose of Business Associate's proper management and administration or to fulfill any of its present or future legal responsibilities when sub-contracting in whole or in part the performance of the underlying agreement provided that:
 - 1. The disclosures are required by law, as provided for in 45 CFR 164.501,
 - 2. Business Associate has received from the third party written assurances that the PHI will be held confidentially,
 - 3. The PHI will only be used or further disclosed as required by law o for the purpose for which it was disclosed to the third party, and,
 - 4. That the third party will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached, as required under 45 C.F.R. 164.504) (4); and
- iii. To provide data aggregation services relating to the health care operations of the Covered Entity.

- b. The parties hereby agree that except as set forth in this Agreement, Business Associate shall be permitted to use or disclose PHI provided or made available from Covered Entity to perform any function, activity or service for, or on behalf of Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Covered Entity.**
- c. Business Associate further covenants and agrees that it shall:**
- i. Implement the administrative, physical and technical safeguards set forth in 45 C.F.R § 164.302-318 and otherwise reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and to use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted under this Agreement.
 - ii. Use appropriate safeguards to maintain the security of and prevent unauthorized access to Covered Entity's PHI, including a written information security program.
 - iii. Require from any of its agents or subcontractors, or other third parties with which Business Associate does business that are provided PHI or electronic PHI on behalf of Covered Entity, to agree, in writing, to adhere to the same restrictions and conditions on the use and disclosure of PHI that apply to Business Associate under this Agreement.
 - iv. To the extent Business Associate maintains PHI in a Designated Record Set, make available to Covered Entity upon written request from Covered Entity, such information as is necessary to fulfill Covered Entity's obligations to provide PHI relating to an Individual's right to obtain a copy of or amend his or her PHI.
 - v. Make available to the Secretary all internal practices, books and records relating to the use and disclosure of PHI received from, or created by, Business Associate on behalf of Covered Entity, for purposes of determining Covered Entity's or Business Associate's compliance with the HIPAA Regulations.
 - vi. During the term of the Underlying Agreement, notify Covered Entity of any Breach of Unsecured PHI, successful Security Incident, or any use or disclosure of data in violation of any applicable federal or state laws or regulations without unreasonable delay (and in no case later than 30 days) after Discovery of such Breach or successful Security Incident. Notice may be supplemented as facts become available and will include, to the extent known, the identification of each individual whose Unsecured PHI has been or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such Breach and other information necessary for Covered Entity to fulfill any Breach notification obligations. "Discovery" under this Section means the day on which such Breach is known to Business Associate. Notice to Covered Entity will be provided to the billing address on file.

- vii. Disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary, in Business Associate's judgment, to perform or fulfill a specific function required or permitted by this Agreement.
- viii. Upon termination, cancellation, or expiration of the Underlying Agreement, Business Associate shall return to Covered Entity or destroy in accordance with standards promulgated by the Secretary of the Department of Human Health Services any and all PHI received from, or created by, Business Associate on behalf of Covered Entity that is maintained by Business Associate in any form.

D. General terms:

- a. **Jurisdiction:** In case of conflict arising out of this agreement, the courts located in the County of _____ shall have exclusive jurisdiction.
- b. **Applicable Laws:** With the exception of applicable Federal Laws in matter of copyrights and other intellectual property protection, California laws exclusively govern this agreement.
- c. **Attorney Fees:** In case of conflict arising out of this agreement, the prevailing party shall be entitled to be reimbursed by the losing party of reasonable attorney fees and costs.
- d. **Binding Effect:** This agreement is binding upon the parties' successors and assigns.
- e. **Assignment:** This agreement is for personal services and cannot be assigned with the assigned party's prior written consent. It can, however, be assigned by any party to any third party owning a controlling interest in the assignor's business. For interpretation purposes, controlling interest means more than 51% of voting power on a fully diluted basis.
- f. **Entire Agreement:** This agreement constitutes the entire understanding and agreement between the parties in connection with the subscription of surveys published by the publisher.
- g. **Notices:** Notices under this agreement shall be sent via certified mail with return receipt or any other time stamped written medium including Emails and Facsimiles.
- h. **Conflict of interest:** All parties to this agreement have taken reasonable steps to protect each other from any conflict of interest, and therefore both parties mutually waive any potential conflict of interest that may arise out of one or more surveys subject matter of this agreement.

- i. **No Third-Party Beneficiaries:** Nothing express or implied in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, or claims.

This agreement was made in two original copies in the County of _____, _____.

Covered Entity

Business Associate

__/__/____
Name: _____
Its _____

__/__/____
Name: _____

CONFIDENTIAL