

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA Business Associate Agreement** ("Agreement"), is effective upon acceptance the Services Agreement by a Customer who is a Covered Entity, and is entered into by and between, you ("Covered Entity"), and JET Worldwide Enterprises, Inc. (the "Business Associate") a software service provider.

Background

- A. Business Associate and Covered Entity have entered into a Services Agreement (the “ Services Agreement”) wherein Business Associate provides access to internet based software to Covered Entity that requires the Business Associate to access, create and use certain health information that is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Subtitle D of the Health Information Technology for Economic and Clinic Health Act (HITECH), and their implementing regulations, as amended.
- B. The purpose of this Agreement is to set forth the requirements necessary to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations.

It is hereby agreed as follows:

- 1. **Applicability:** The terms of this Agreement apply only to customers of Business Associate who are Covered Entities as that term is defined by the HIPAA Regulations and only to information that is Protected Health Information as that term is defined in the HIPAA Regulations.
- 2. **Definitions:** Capitalized terms used but not otherwise defined in this Agreement have the meanings given those terms in the HIPAA Regulations
As used in this Agreement, the terms below have the following meanings:

"Breach" has the meaning given in 45 CFR § 164.402.

"Business Associate" means JET Worldwide Enterprises, Inc to the extent it qualifies as a Business Associate of Covered Entity as defined in 45 CFR § 160.103.

“Covered Entity” has the meaning given in 45 CFR §160.103.

"Designated Record Set" has the meaning given in 45 CFR § 164.501.

"HHS" means the United States Department of Health and Human Services.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing rules and regulations, including the HIPAA Breach Notification Rule, the HIPAA Privacy Rule, and the HIPAA Security Rule.

"HIPAA Breach Notification Rule" means the Breach Notification for Unsecured Protected Health Information issued by HHS, 45 CFR Parts 160 and 164 (Subparts A and D).

"HIPAA Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information regulations issued by HHS, 45 CFR Parts 160 and 164 (Subparts A and E).

“HIPAA Regulations” shall refer collectively to the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Breach Notification Rule as amended.

HIPAA Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information issued by HHS, 45 CFR Parts 160 and 164 (Subparts A and C).

"HITECH" means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 and its implementing regulations.

"PHI" or "Protected Health Information" and "Electronic PHI" have the respective meanings given in 45 CFR § 160.103, except that each is limited to PHI (and Electronic PHI) that Business Associate creates, receives, maintains, transmits or collects for or on behalf of Covered Entity.

"Required by Law" has the meaning given in 45 CFR § 164.103.

"Subcontractor" has the meaning given in 45 CFR § 160.103. "Unsecured PHI" has the meaning given in 45 CFR § 164.402.

3. Business Associate's Obligations with Respect to the HIPAA Privacy Rule. Business Associate will comply with the privacy requirements that are directly imposed on Business Associate by HITECH § 13404 subsection (a).
4. Use and Disclosure of PHI. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law, and shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate may:
 - a. use or disclose PHI to perform the functions and services it provides to and on behalf of, Covered Entity, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by Covered Entity;
 - b. use PHI for the proper management and administration of Business Associate functions or to carry out the legal responsibilities of Business Associate and disclose PHI for the proper management and administration of Business Associate functions, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
 - c. use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B); and
 - d. use PHI to report violations of law or certain other conduct to appropriate federal and state authorities or other designated officials in a manner consistent with 45 CFR § 164.502(j)(1).
5. Compliance While Carrying Out Obligations of Covered Entity. Where applicable, and to the extent the Business Associate carries out one or more of Covered Entity's obligation(s) under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the HIPAA Privacy Rule that apply to the Covered Entity in the performance of such obligation(s).
6. De-Identified PHI. PHI that has been de-identified within the meaning of 45 CFR § 164.514(b) is no longer PHI and may be used or disclosed by Business Associate for any lawful purpose.

7. Business Associates Sub-Contractors: In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such PHI.
8. Mitigation and Reporting of Violation: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, and where a violation occurs, Business Associate agrees to report to Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware, including any such use or disclosure by any Subcontractor of Business Associate.
9. Provide Access and Amendment to PHI in a Designated Record Set. To the extent that Business Associate has PHI in a Designated Record Set and Covered Entity does not maintain the original, Business Associate agrees to provide access to such PHI as Covered Entity may require to fulfill its obligations under 45 CFR § 164.524.
 - a. If Business Associate receives a request for access directly from Covered Entity's patient, Business Associate will promptly notify Covered Entity of such request.
 - b. Business Associate agrees to promptly notify Covered Entity if Business Associates receives a request from Covered Entity's patient to amend PHI.
10. Make Practices, Books and Records Available to Secretary of HHS. Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary of HHS for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Privacy Rule, subject to attorney-client and other legal privileges.
11. Document Disclosures of PHI for Accounting of Disclosures. Business Associate agrees to document disclosures of PHI as required for Covered Entity to comply with 45 CFR § 164.528. Business Associate agrees to promptly provide such information to Covered Entity to permit Covered Entity to respond to a patient request for an accounting of disclosures. If Business Associate receives a request for an accounting of disclosures directly from Covered Entity's patient, Business Associate will promptly notify Covered Entity of such request.
12. Meet Minimum Necessary Use and Disclosure Requirements. Business Associate will make reasonable efforts to use, disclose, or request only the minimum PHI necessary to accomplish the purpose of the use, disclosure or request in accordance with 45 CFR § 164.502(b).
13. Restrict Use or Disclosure of PHI for Sale, Marketing or Fundraising. Business Associate will not use or disclose PHI for sale, marketing or fundraising in violation of the HIPAA Regulations.
14. Business Associate's obligations with respect to the HIPAA Security Rule. Business Associate shall use appropriate safeguards, and comply with the HIPAA Security Rule with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate will report to the Covered Entity any Security Incident of which it becomes aware. Notwithstanding the above, the Parties acknowledge that probes, reconnaissance and automated scripted scans are commonplace in the industry and as such, the Parties acknowledge and agree that, to the extent such activities constitute Security Incidents, this Paragraph constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of such Security Incidents for which no additional notice to Covered Entity shall be required, as long as such activities do not result in unauthorized access, Use, or Disclosure

of PHI. Probes, automated scripted and reconnaissance scanning as used in this paragraph include, without limitation, pings, other broadcast attacks on Business Associate's firewalls, port scans, and unsuccessful log-on attempts that do not result in unauthorized access, Use, or Disclosure of PHI.

- 15. Business Associate's Notice of Breach to Covered Entity.** When Business Associate or its Subcontractor discovers a Breach of Unsecured PHI, Business Associate will notify Covered Entity in writing without unreasonable delay but no later than sixty (60) calendar days following the date of discovery of the Breach. To the extent information is available to Business Associate, the notice to Covered Entity will include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach and a brief description of what happened, including the date of the Breach, the date of discovery, a general description of the Unsecured PHI or other sensitive data (such as Social Security or account numbers) involved in the Breach, and any other information required to be disclosed under 45 CFR § 164.410. 2.
- 16. Covered Entity's Notice of Breach.** Covered Entity will be responsible for providing notice of the Breach to HHS or the media as required by the HIPAA Breach Notification Rule. Covered Entity will also be responsible for providing any additional notice of a breach required of Covered Entity by applicable state law.
- 17. Obligations of Covered Entity Regarding PHI.** To the extent that it may impact Business Associate's use or disclosure of PHI, Covered Entity agrees to inform Business Associate in writing of any limitation in its Notice of Privacy Practices; any changes to or revocation of a patient's authorization with respect to PHI; any restriction to a use or disclosure agreed to by Covered Entity with respect to a patient's PHI; and any opt-out by a patient from marketing or fundraising activities by Covered Entity. Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permitted under HIPAA if done by Covered Entity. Covered Entity will disclose PHI to Business Associate in accordance with HIPAA and HITECH and will be responsible for using appropriate safeguards to maintain the confidentiality, privacy and security of PHI transmitted or disclosed to Business Associate.
- 18. Term and Termination:** This Agreement shall continue in effect until JET Worldwide Enterprises, Inc ceases providing services to Covered Entity.

 - a. Termination. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of this Agreement, then the non-breaching party shall provide written notice of the breach or violation to the other party that specifies the nature of the breach or violation. The breaching party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching party, then the nonbreaching party may terminate this Agreement and the Services Agreement.
 - b. Effect of Termination or Expiration. The parties agree that it is not feasible for Business Associate to destroy Covered Entity's PHI and agree that Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination or expiration of this BA Agreement, and to limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI not feasible.
- 19. Statutory and Regulatory References.** This Agreement may be amended only in a writing agreed to by both Parties. The Parties agree to act in good faith to amend the Agreement to the extent that changes to HIPAA Regulation require amendment for Covered Entity's or Business Associate's compliance with such regulations.

20. Interpretation. This Agreement shall be construed in accordance with applicable provisions of HIPAA and HITECH and HHS guidance interpreting same. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with applicable provisions of HIPAA and HITECH. The provisions of this Agreement will prevail over any contrary or inconsistent provision in the Services Agreement or related documents only where such interpretation is related to requirements of the HIPAA Regulations. All other terms of the Services Agreement or related documents remain in force and effect.

21. No Third Party Beneficiaries/Assignment. Nothing in this Agreement confers on any person other than Covered Entity and Business Associate (and their respective successors and assigns) any rights, remedies, obligations or liabilities whatsoever. There are no third party beneficiaries to this Agreement.

22. Governing Law. Except as preempted by HIPAA or other federal law, this Agreement will be governed by the laws governing the underlying Services Agreement.

Accepted "Covered Entity":

Accepted "Company"

Signature
Name: _____
Title: _____
Entity: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____