

API LICENSE AGREEMENT

NOTICE: THIS API LICENSE AGREEMENT (“**AGREEMENT**”) GOVERNS YOUR USE OF OHMD, INC.’S (“**OhMD**”) APPLICATION PROGRAMMING INTERFACES, APPLICATION PROGRAMMING INTERFACE KEY (“**API Key**”) INTERFACE DEFINITIONS AND ASSOCIATED TOOLS AND DOCUMENTATION PROVIDED BY OhMD PURSUANT TO THIS AGREEMENT (COLLECTIVELY, THE “**API**”).

PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, THEN YOU MAY NOT USE THE API. BY CLICKING THE “ACCEPT” WHEN ACCESSING THE API OR BY REGISTERING FOR ACCESS TO THE API, YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND YOUR FIRST USE OF OR ACCESS TO THE API SHALL IRREVOCABLY INDICATE YOUR ACCEPTANCE AND AGREEMENT TO BE BOUND BY THIS AGREEMENT.

YOU REPRESENT YOU ARE LAWFULLY ABLE TO ENTER INTO CONTRACTS AND ARE OF THE LEGAL AGE OF MAJORITY IN THE JURISDICTION IN WHICH YOU RESIDE (AT LEAST EIGHTEEN (18) YEARS OF AGE IN MANY STATES). IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, IN WHICH CASE “YOU” AND “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT ACCESS, DOWNLOAD, INSTALL, OR OTHERWISE USE THE API IN ANY MANNER WHATSOEVER.

YOU SHOULD PRINT AND RETAIN A COPY OF THIS AGREEMENT FOR YOUR RECORDS BY USING THE PRINT FUNCTIONALITY IN YOUR BROWSER.

- Licenses.** Subject to the terms and conditions of this Agreement, OhMD grants you a limited, non-exclusive, non-transferable, non-sublicensable, “as-is” license to access and use the API solely for purposes of enabling your applications, websites, or software (“**Your Applications**”) to send certain information to, and receive certain information from, the OhMD proprietary communications platform (the “**Platform**”) during the term of this Agreement. OhMD may terminate this Agreement and the licenses granted above at any time, without cause, on written notice to you or upon OhMD’s discontinuation of the API. This Agreement shall automatically terminate if you breach any of its provisions. OhMD may modify or alter the API and Platform at any time. In such case, it will use reasonable efforts to inform you of any such change by posting on its website portal or other method in OhMD’s reasonable discretion.
- License Restrictions.** You are only authorized to use the API in accordance for the limited purposes authorized herein in accordance with this Agreement. A valid API Key is required for Your Applications to interface with the Platform. Except as expressly authorized in this Agreement, you may not modify, copy, or distribute the API, including the API Key, and Platform. You shall not, nor will you knowingly allow any third party to or, as applicable, enable Your Application to, (a) rent, sell, resell, trade, assign, lease, sublicense, distribute, encumber, or otherwise transfer the API or use it in any manner not expressly authorized by this Agreement, (b) use, copy, distribute, or modify the API in any “service bureau” or “timesharing” business, (c) attempt to reverse engineer, decompile, decode, adapt, modify, alter, or disassemble the API for any reason, (d) input, upload, transmit, or otherwise provide to or through the Platform or API, any data, information, or materials that are unlawful or injurious, or contain, transmit, or activate any virus, worm, malware, or other malicious or harmful computer code or programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system or data, (e) access or use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third-party or violates Your privacy notices or any applicable law, (f) remove or destroy any legal or proprietary markings or legends, including copyright and trademark notices, appearing on or contained within any API or related documentation, (g) publish, display or allow access or linking to the API from any location or source other than Your Application, or (h) access or use the API for purposes of competitive analysis of the Platform or API, the development, provision, or use of a competing software service or product or any other purpose that creates liability for OhMD or is otherwise to the OhMD’s detriment or commercial disadvantage.
- Access Keys.** OhMD will provide you with API Keys to enable OhMD to authenticate you and associate your API activity with Your Application. You are fully responsible for maintaining the secrecy and security of your API Keys and for all activities that occur using your API Keys. You may not (a) modify or circumvent your API Keys; (b) sell, transfer, or disclose your API Keys to anyone; or (c) use API Keys other than with Your Application.
- Privacy and Security.** You will maintain and enforce information and data privacy and security procedures with respect to your access and use of the API that (a) are at least equal to industry standards, (b) are in accordance with OhMD’s reasonable security requirements, (c) comply with all applicable international, foreign, federal, state and local laws, statutes, rules, orders and regulations, and (d) provide reasonably appropriate administrative, technical, and physical safeguards to protect against accidental or unlawful destruction, loss, alteration, or unauthorized access or use of the API,

the Platform, or any OhMD networks, systems, or data. You will report to OhMD immediately any breaches of security or unauthorized access of OhMD's systems or your systems that may jeopardize the security of OhMD's systems that you detect or become aware of. You will use diligent efforts to remedy such breach of security or unauthorized access in a timely manner. You represent and warrant that you shall comply with the terms of the Subcontractor Business Associate Agreement attached hereto as Attachment A where applicable.

5. **Right to Provide Data.** By providing, or having Your Application provide, any content, data or information, including without limitation, protected health information (collectively, "Data") to OhMD, you represent and warrant that you have obtained all rights and consents necessary to provide such Data to OhMD and for OhMD to use it in or with the Platform, and as instructed or authorized by the relevant end user OhMD customer.

6. **Modifications.** OhMD may modify the API, permitted API calls, the Platform, or any of the features provided in connection with use of the API at any time with or without notice. OhMD may from time to time change the terms of this Agreement upon thirty (30) days written notice to you or posting such changes publicly to the OhMD website. Except where stated otherwise herein, all amended terms will be effective thirty (30) days after notice is provided. If any modification is unacceptable, your only recourse is to stop using the API. Use of the API after the date on which changes become effective will constitute acceptance of such changes.

7. **Right to Monitor and Audit.** OhMD may monitor or audit Your Application or activities relating to your use of the API, and you agree to cooperate in a commercially reasonable manner with such monitoring or audit.

8. **Ownership.** As between OhMD and you, OhMD retains all rights, title, and interest in and to all intellectual property rights embodied in or associated with the API, the Platform, and any content, data, or information accessed from the Platform through the API. As between OhMD and you, you retain all rights, title, and interest in and to all intellectual property rights embodied in or associated with Your Application and any content, data, or information accessed from your website, service, or databases through the API that did not originate from the Platform.

9. **Indemnification**

You will indemnify, defend, and hold OhMD, its parent, subsidiaries, partners, and affiliates, and each of their respective employees, officers, directors, agents, consultants, and licensors, harmless against any and all claims, costs, losses, damages, liabilities, judgments, and expenses (including reasonable fees of attorneys and other professionals) (collectively, "Claims") that may arise from or are related to (a) your use or misuse of the API or any content, data or other information received from OhMD, in violation of this Agreement or applicable law, (b) your failure to obtain all of the rights and consents required for any Data transferred to OhMD through the API, or (c) your infringement or alleged infringement or misappropriation of a third party's intellectual property rights or privacy rights in any manner, including with regard to Your Application. You will have sole control of the defense and settlement of any Claim, at your own cost, but you may not settle any Claim without OhMD's prior written consent, which shall not be unreasonably withheld.

OhMD will indemnify, defend, and hold you harmless against any and all Claims that your use of the API as permitted hereunder infringes or misappropriates any third party intellectual property right. OhMD shall have no obligation to indemnify you for any claimed infringement that arises from or is based on (i) the Data, (ii) use of the API in combination with any software, products, data, or other materials, or (iii) your violation of law or this Agreement. OhMD will have sole control of the defense and settlement of any Claim, at its own cost, but OhMD may not settle any Claim without your prior written consent, which shall not be unreasonably withheld.

10. **Confidentiality.** "Confidential Information" means all information provided by either party to the other under or pursuant to this Agreement, including the terms and existence of this Agreement. Both parties agree that it will not use Confidential Information other than for the purpose of performing this Agreement or disclose Confidential Information to any third party, other than its employees and consultants who need to know the Confidential Information to perform under and as permitted by this Agreement. Notwithstanding any provisions to the contrary, these confidentiality obligations will survive the termination of this Agreement for five (5) years, provided that any information that constitutes a trade secret of the party shall remain subject to the confidentiality obligations and provisions under this Agreement.

11. **Disclaimer of Warranty.** THE API IS SUPPLIED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. OhMD EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND TITLE/NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, OhMD DOES NOT WARRANT THAT THE API AND/OR PLATFORM OR RESULTS OF THE USE THEREOF, WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR THE API WILL BE

UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE API OR PLATFORM WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OhMD OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF OhMD's OBLIGATIONS UNDER THIS AGREEMENT. YOU ACKNOWLEDGE THAT YOU HAVE NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN. YOU HEREBY WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST OhMD ARISING OUT OF THE API, THE PLATFORM, AND/OR THIS AGREEMENT.

12. **Limitation of Liability.** THE API IS PROVIDED AS A CONVENIENCE TO YOU. IN NO EVENT WILL OhMD, ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUPPLIERS, VENDORS, AGENTS, AND BUSINESS PARTNERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF SALES, TRADING LOSSES, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, LOSS OF USE, LOSS OF PRODUCTION, DIMINUTION IN VALUE, LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, COST OF REPLACEMENT GOODS OR SERVICES, LOSS OF GOODWILL OR REPUTATION, OR OTHER DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, PUNITIVE, SPECIAL, ENHANCED OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE API, THE PLATFORM, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE OTHERWISE FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN ANY EVENT, THE MAXIMUM LIABILITY OF ANY OF THE FOREGOING PARTIES FOR ALL CLAIMS OF EVERY KIND (INCLUDING THOSE ARISING IN CONTRACT, TORT, INCLUDING NEGLIGENCE, AND STRICT LIABILITY) ARISING OUT OF THE API, THE PLATFORM, AND/OR THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY SHALL NOT EXCEED ONE THOUSAND DOLLARS (\$1,000.00). YOUR SOLE AND EXCLUSIVE REMEDY AND OhMD's SOLE AND EXCLUSIVE LIABILITY FOR ANY CLAIM OR DAMAGES ARISING OUT OF THE API AND PLATFORM IS TO CEASE USE OF THEM.

13. **Term and Termination.** This Agreement will commence upon your access, download, or initial use of the API and will continue until you stop using the API, unless earlier terminated as set forth herein. OhMD may terminate this Agreement immediately if you fail to comply with any term of this Agreement or as otherwise set forth herein. You may terminate this Agreement at any time by ceasing all use of the API. Upon termination, your license to use the API shall terminate and you must immediately stop using the API and destroy all API Keys in your possession or control.

14. **Feedback.** You may provide suggestions, comments, questions, or other feedback (collectively, "**Feedback**") to OhMD with respect to its products and services, including the API and Platform. Feedback is voluntary and OhMD is not required to hold it in confidence. OhMD may use Feedback for any purpose without obligation of any kind. To the extent a license is required to make use of the Feedback, you hereby grant OhMD an irrevocable, non-exclusive, perpetual, royalty-free, world-wide license to use the Feedback in connection with OhMD's business, including enhancement of the API, the Platform, and related products and services. OhMD is free to use, without attribution or compensation to any part, any and all intellectual property rights contained in the Feedback, for any purpose whatsoever. Notwithstanding the foregoing, OhMD is under no obligation to make use of any Feedback.

15. **General.** The validity, construction, and performance of this Agreement and the legal relations among the parties to this Agreement will be construed according to, and the rights of the parties will be governed by, the law of the State of Vermont, without reference to its conflict of laws rules. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of Vermont. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS; (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT; AND (C) WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY VERMONT LAW. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any court of content jurisdiction, it shall be severed from this Agreement and the remaining provisions shall remain in full force and effect. No course of dealing or usage of trade by or between the parties shall be deemed to effect any such amendment or modification. No waiver of any right, remedy, power, or privilege under this Agreement is effective unless contained in a writing signed by the Party charged with such waiver. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, or a waiver of any other,

different or subsequent breach. Nothing in this Agreement shall create in either party any right or authority to incur any obligations on behalf of, or to bind in any respect, the other party and nothing in this Agreement shall be construed to create any agency, joint venture or partnership. There are no third Party beneficiaries under this Agreement. You may not directly or indirectly assign, transfer, or delegate any of your rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger, operation of law, or any other manner, without the prior written consent of OhMD. Any purported assignment or delegation in violation of this Section shall be null and void. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Any notices to OhMD must be sent to the address listed on the OhMD website via overnight courier, to the attention of Legal Notices, and is deemed given upon receipt. OhMD may send you notices by email or regular mail at the address listed on your website. This Agreement sets forth the entire Agreement between the parties and supersedes prior proposals, agreements and representations between them related to the subject matter hereof, whether written or oral. No modifications or amendments to this Agreement will be binding upon the parties unless made in writing and duly executed by duly authorized representatives of both parties. Sections 2, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of this Agreement shall survive the expiration or termination of this Agreement. You agree not to contest the validity or enforceability of this Agreement because it was accepted in electronic form.

ATTACHMENT A
SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

This Subcontractor Business Associate Agreement (“**BAA**”) is entered into by and between OhMD, Inc. (“**Business Associate**”) and the other party to the API License Agreement (“**Agreement**”) to which this BAA is attached (“**Contractor**”) (each a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, Business Associate is a “business associate” to covered entities (“**Covered Entities**”), as such terms are defined in 45 C.F.R. § 160.103;

WHEREAS, Contractor performs certain services for or on behalf of Business Associate, and in performing said services, Contractor creates, receives, maintains, or transmits Protected Health Information (“**PHI**”);

WHEREAS, the Parties intend to protect the privacy and provide for the security of the PHI Disclosed (as defined below) by Business Associate to Contractor, or created, received, maintained, or transmitted by Contractor, when providing services. Such PHI will be protected in compliance with the Health Insurance Portability and Accountability Act (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the “**HITECH Act**”) and its implementing regulations and guidance issued by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”) (collectively, the “**HIPAA Regulations**”); and

WHEREAS, Business Associate and Contractor are required under the HIPAA Regulations to enter into a Business Associate Agreement that meets certain requirements with respect to the Use (as defined below) and Disclosure of PHI, which are met by this BAA. Accordingly, Contractor agrees to comply with this BAA.

In consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

The following terms shall have the respective meanings set forth below. Capitalized terms used in this BAA and not otherwise defined shall have the meanings ascribed to them in the HIPAA Regulations.

- a. “**Breach**” shall have the meaning given to such term under 45 C.F.R. § 164.402 and applicable state law.
- b. “**Designated Record Set**” shall have the meaning given to such term under 45 C.F.R. § 164.501.
- c. “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Contractor or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.
- d. “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.
- e. “**Protected Health Information**” and “**PHI**” mean any information, whether oral or recorded in any form or medium, provided by Business Associate to Contractor, that: (a) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (c) shall have the meaning given to such term under 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.
- f. “**Required by Law**” shall have the meaning given to such term under 45 C.F.R. § 164.103.
- g. “**Security Incident**” shall have the meaning given to such term under 45 C.F.R. § 164.304.
- h. “**Services**” shall mean the services or functions performed by Contractor for or on behalf of Business Associate pursuant to the Agreement.
- i. “**Unsecured PHI**” shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402, and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.
- j. “**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Contractor’s internal operations, as set forth in 45 C.F.R. § 160.103.
- k. “**Workforce**” shall have the meaning given to such term under 45 C.F.R. § 160.103.

OBLIGATIONS OF CONTRACTOR

2.1. Permitted Uses and Disclosures of Protected Health Information. Contractor shall not Use or Disclose PHI created, received, maintained, or transmitted for or on behalf of Business Associate except to perform the Services required by the Agreement, or as permitted by this BAA or Required by Law. Contractor shall not Use or Disclose PHI in any manner that would constitute a violation of the HIPAA Regulations if so Used or Disclosed by Business Associate or a Covered Entity. Without limiting the generality of the foregoing, Contractor is permitted to Use and Disclose PHI for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Contractor obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not Use or further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Contractor to such person, and that such person will notify Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached. To the extent permitted in the Agreement or otherwise approved in writing by Business Associate, Contractor may Use PHI to provide data aggregation services to Business Associate relating to the health care operations of a Covered Entity or Business Associate. Contractor is not permitted to Use PHI to create de-identified information except as approved in writing by Business Associate.

2.2. Adequate Safeguards of PHI. Contractor agrees to use appropriate safeguards and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to e-PHI, to prevent use or disclosure of the information other than as provided for by this BAA.

2.3. Mitigation. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this BAA.

2.4. Reporting Security Incidents and Non-Permitted Uses or Disclosures. Contractor shall notify Business Associate of any Use or Disclosure by Contractor or its Subcontractors that is not permitted by this BAA and each Security Incident, including Breaches of Unsecured PHI, within three (3) calendar days of discovery, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Contractor and Business Associate acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Business Associate acknowledges and agrees that no additional notification to Business Associate of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Contractor shall investigate each unauthorized access, acquisition, Use or Disclosure of PHI that it creates, receives, maintains, or transmits for or on behalf of Business Associate. If such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Contractor shall comply with the requirements of Section 2.5 below.

2.5. Breach of Unsecured PHI. Contractor shall provide a written report to Business Associate of such Breach without unreasonable delay but no later than five (5) business days after discovery of the Breach. Contractor shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Contractor or any of its Workforce or agents, other than the person who committed the Breach, or by exercising reasonable diligence should have been known to Contractor or any of its Workforce or agents, other than the person who committed the Breach. To the extent the information is available to Contractor, Contractor's written notice shall include the information required by 45 C.F.R. §164.410(c). Contractor shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Contractor shall cooperate with Business Associate and an applicable Covered Entity in meeting Business Associate's and the Covered Entity's obligations with respect to such Breach. Business Associate and the Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Contractor shall reimburse Business Associate for its reasonable costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.6. Delegated Responsibilities. To the extent that Contractor carries out one or more of Business Associate's or a Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Contractor must comply with the requirements of Subpart E that apply to Covered Entities in the performance of such obligations.

2.7. Availability of Internal Practices, Books, and Records to Government. Contractor agrees to make its internal practices, books and records relating to the Use and Disclosure of Business Associate's PHI available to the Secretary for purposes of determining Business Associate's compliance with the HIPAA Regulations. Contractor shall immediately notify Business Associate of any such requests by the Secretary and, upon Business Associate's request, provide Business Associate with any copies of documents Contractor provided to the Secretary.

2.8. Access to and Amendment of Protected Health Information. To the extent that Contractor maintains a Designated Record Set on behalf of Business Associate and within ten (10) calendar days of such request by Business Associate, Contractor shall (a) make the PHI it maintains (or which is maintained by its Subcontractors) in such Designated Record Set available to Business Associate for inspection and copying or, if requested by Business Associate, to an individual, to enable Business Associate or a Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524; and (b) amend the PHI it maintains (or which is maintained by its Subcontractors) in such Designated Record Set to enable Business Associate or a Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. If Contractor maintains PHI in a Designated Record Set electronically, Contractor shall provide such information in the electronic form and format requested by Business Associate if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Business Associate to enable Business Associate to fulfill its obligations under 45 C.F.R. § 164.524(c)(2).

2.9. Accounting. Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for Business Associate or a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Within ten (10) calendar days of receipt of a request from Business Associate or an individual for an accounting of disclosures of PHI, Contractor and its Subcontractors shall make available to Business Associate the information required to provide an accounting of disclosures to enable Business Associate to fulfill its obligations under 45 C.F.R. § 164.528.

2.10. Use of Subcontractors. Contractor shall require each of its Subcontractors that creates, receives, maintains, or transmits PHI on behalf of Contractor, to execute a written agreement that includes the same restrictions and conditions that apply to Contractor under this BAA with respect to PHI. For the avoidance of doubt, Contractor may not permit third parties (including, without limitation, cookies, tags, pixels, analytics, and tracking technology vendors) to create, receive, maintain, or transmit PHI (including, without limitation, device identifiers, IP addresses, or other unique identifying numbers or codes) unless such third party signs a business associate agreement with Contractor.

2.11. Audit. Upon a 45-day advance written notice, but not more than once per year or in response to a suspected or confirmed Breach, Business Associate shall have the right to audit and monitor all applicable activities and records of Contractor to determine Contractor's compliance with the requirements relating to the creation or Use and Disclosure of PHI as it relates to the privacy and security sections of this BAA. Contractor shall promptly remedy any violation of any term of this BAA and shall certify the same to Business Associate in writing. The fact that Business Associate has the right to inspect, inspects, or fails to inspect Contractor's facilities, systems, and procedures, does not relieve Contractor of its responsibility to comply with this BAA, regardless of whether Business Associate detects or fails to detect a violation by Contractor, nor does it constitute Business Associate's acceptance of such practices or waiver of Business Associate's rights under this BAA.

2.12. Minimum Necessary. Contractor (and its Subcontractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.13. Assistance in Litigation or Administrative Proceedings. Contractor shall make itself, and any Subcontractors, Workforce, or agents assisting Contractor in the performance of its obligations under the Agreement, available to Business Associate, at no cost to Business Associate, to testify in any claim commenced against Business Associate, an applicable Covered Entity, or their respective directors, officers, or employees based upon claimed violation by Contractor or its agents or Subcontractors of the HIPAA Regulations, except where Contractor or its Subcontractor, employee, or agent is a named adverse party.

TERM AND TERMINATION

3.1. Term. This BAA shall remain in effect until all of the PHI provided by Business Associate to Contractor, or created or received by Contractor on behalf of Business Associate, is destroyed or returned to Business Associate, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 3.3.

3.2. Termination for Cause. In addition to and notwithstanding the termination provisions set forth in the Agreement, upon Business Associate's knowledge of a material breach or violation of this BAA by Contractor, Business Associate shall either: (a) Notify Contractor of the breach in writing, and provide an opportunity for the Contractor to cure the breach or end the violation within thirty (30) days of such notification; provided that if Contractor fails to cure the breach or end the violation within such time period to the satisfaction of Business Associate, Business Associate may immediately terminate this BAA upon written notice to Contractor; or (b) Upon thirty (30) days written notice to Contractor, immediately terminate this BAA and the Agreement if Business Associate determines that such breach cannot be cured.

3.3. Disposition of Protected Health Information Upon Termination. Upon termination or expiration of this BAA, Contractor shall either return or destroy all PHI received from, or created or received by Contractor on behalf of Business Associate, that Contractor still maintains in any form and retain no copies of such PHI. If Business Associate requests that Contractor return PHI, PHI shall be returned in a mutually agreed upon format and timeframe, at no additional charge to Business Associate. Upon request, Contractor shall certify in writing that all PHI has been returned or destroyed. In the event that Contractor believes that returning or destroying PHI is not feasible, Contractor shall notify Business Associate in writing of the condition that makes return or destruction infeasible. If Business Associate agrees that return or destruction of the PHI is infeasible, Contractor shall extend the protections of this BAA to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI. Contractor agrees that its obligation with regard to notifying Business Associate of any potential Breach will also extend indefinitely beyond the term of this BAA.

MISCELLANEOUS

4.1. Amendment to Comply with Law. To the extent applicable, amendments or modification to the HIPAA Regulations may require amendments to certain provisions of this BAA. Amendments shall only be effective if executed in writing and signed by a duly authorized representative of each Party.

4.2. Relationship to Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of the Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of the Agreement, and shall be considered an amendment of and supplement to the Agreement.

4.3. Indemnification. Notwithstanding anything to the contrary which may be contained in the Agreement, including but not limited to any limitations on liability contained therein, Contractor hereby agrees to indemnify and hold harmless Business Associate, any applicable Covered Entity, and their respective affiliates, officers, directors, managers, members, shareholders, employees and agents from and against any and all fines, penalties, damages, claims or causes of action and expenses (including, without limitation, court costs and attorney's fees) arising from or related to (i) any acts or omissions in violation of the HIPAA Regulations, other applicable law, or this BAA by Contractor or its Workforce, agents, or Subcontractors; or (ii) a Breach. Business Associate shall be entitled to enjoin and restrain Contractor from any continued violation of this BAA.

4.4. Notices. Any notices or communications hereunder shall be in writing by certified mail, return receipt requested, or delivered by a nationally recognized courier service with delivery confirmation, such as FedEx, or by email (with evidence of receipt) at the addresses that follow the signature blocks at the end of this BAA.

4.5. Relationship of Parties. Notwithstanding anything to the contrary in the Agreement, Contractor is an independent contractor and not an agent of Business Associate under this BAA. Contractor has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Contractor obligations under this BAA.

4.6. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with the HIPAA Regulations. The Parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with such laws and regulations.

4.7. Regulatory References. A reference in this BAA to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.

4.8. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

4.9. Insurance. In addition to any general and/or professional liability insurance required of Contractor, Contractor agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the obligations of Contractor, its Workforce, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Business Associate promptly upon request. Contractor shall notify Business Associate immediately in the event of a lapse, cancellation, or material modification of such coverage.

4.10. State Privacy Laws. Contractor shall comply with all applicable international, federal, and state data privacy and security laws.

4.11. Data Ownership. Contractor acknowledges that Contractor has no ownership rights with respect to the PHI and any information derived from the PHI.

4.12. No Offshore Work. In performing the functions, activities, or services for, or on behalf of, Business Associate, Contractor shall not, and shall not permit any of its Subcontractors, to transmit or make available any PHI to any entity or individual outside the United States without the prior written consent of Business Associate.

4.13. Counterparts; Electronic Signatures. This BAA may be executed in one or more counterparts, all of which together shall constitute only one agreement. If any signature is delivered by facsimile or email or is signed in any electronic format, such signature shall create a valid and binding obligation with the same force and effect as if such signature were handwritten.

4.14. Survival. The respective rights and obligations of the Parties under Sections 2.4, 2.5, 2.9, 2.13, 3.3, and 4.3 of this BAA shall survive the termination of this BAA and Agreement.