

# Business Associates Agreement

If you (“Client”) are a Covered Entity under the HIPAA Rules (as defined herein) and, pursuant to an Agreement between Azurative, LLC, a Texas limited liability company (“Provider”) provide Protected Health Information to Provider, then Provider makes the following agreements regarding the receipt and handling of Protected Health Information protected by the HIPAA Rules. All agreements in this Business Associate Agreement are limited to the receipt and handling of Protected Health Information. Accepting the benefits of this Business Associate Agreement constitutes agreement by Client to the obligations herein stated regarding the relation of the parties as Covered Entity and Business Associate. This Agreement is otherwise a part of, is subject to, and is governed by the Provider’s [Terms of Service](#) and is only in effect while the Client is under a paid subscription for its service for the related Client data. **Definitions** The following terms used in this Agreement have the same meanings as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Specific Definitions

- **Business Associate.** “Business Associate” generally has the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, means Provider.
- **Covered Entity.** “Covered Entity” generally has the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, means Client.
- **HIPAA Rules.** “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**Obligations of Client** To the extent that Client or their customers are storing Protected Health Information with Provider, Client agrees to:

- a. Not store any Protected Health Information in the subject, title or similar meta-level fields. All Protected Health Information must be stored within the body elements.
- b. Ensure their users and customers are aware of the proper care and storage of Protected Health Information.
- c. Ensure that retention schedules of information as defined in Provider’s systems meet their retention obligations.

**Obligations as Business Associate** To the extent Provider is acting as a Business Associate receiving and handling Protected Health Information, Business Associate agrees to:

- a. Not Use or Disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. Notice of an unauthorized Disclosure will be made without unreasonable delay, but in no event more than thirty (30) days after discovery of the unauthorized Disclosure;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- e. Within fifteen (15) days of receipt of a written request for access to Protected Health Information provided to Provider for which Covered Entity is responsible, make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- f. Within fifteen (15) days of receipt of a written request regarding Protected Health Information provided to Provider for which Covered Entity is responsible, make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- g. Maintain and, within fifteen (15) days of receipt of a written request by Provider, make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- h. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes

of determining compliance with the HIPAA Rules, subject to attorney-client and other applicable legal privileges and other legal prohibitions on Disclosure.

## **Permitted Uses and Disclosures**

- a. Business Associate may only Use or Disclose Protected Health Information as necessary to perform the services set forth in the Terms of Service. The Business Associate is authorized to Use Protected Health Information to de-identify the information in accordance with 45 CFR 164.514(a)-(c). The parties also may wish to specify the manner in which the Business Associate will de-identify the information and the permitted Uses and Disclosures by the Business Associate of the de-identified information.
- b. Business Associate may Use or Disclose Protected Health Information as Required by Law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.
- d. Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- e. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required by Law or for the purposes 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.

Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity. **Covered Entity Privacy Practices**

- a. Client agrees that any reports, notification or other notice by Provider pursuant to this Business Associate Agreement may be made electronically. Client shall provide contact information to support@cloudradial.com or such other location or method of updating contact information as Provider may specify hereafter. Prior to such notice, Provider may rely on the information it has on file. Client will diligently update its contact information with Provider during the term of this Agreement and Provider may rely on the direction so received.
- b. Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such

limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- d. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.
- e. Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with the HIPAA Rules
- f. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

## **Term and Termination**

- a. Term. The Term of this Agreement shall be effective during the term of the the Client's paid relationship with the Provider, and shall terminate upon the termination of the paid relationship or upon the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within thirty (30) days.
- c. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
  - 1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - 2. Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the remaining Protected Health Information that the Business Associate still maintains in any form;
  - 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use

or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

4. Not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set forth in this Agreement; and Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

In addition, Covered Entity's termination of this Agreement for cause constitutes good cause for Covered Entity to terminate any other agreements in connection with which Business Associate received any Protected Health Information from Covered Entity. The obligations of Business Associate under this Section c. shall survive the termination of this Agreement.

#### **Additional Terms**

- a. Interpretation. A reference in this Agreement to a section of the HIPAA Rules means the section in effect or as amended. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- b. Amendment. Provider may amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable laws.
- c. No Third Party Beneficiaries. Nothing express or implied in this Business Associate Agreement is intended, nor shall it confer on any person other than Client or Provider, and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- d. Independent Contractors. Client and Provider are independent contractors. Nothing in this Business Associate Agreement shall create a partnership, agency or fiduciary relationship between them.

Effective: May 25, 2019

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