

BUSINESS ASSOCIATE AGREEMENT

The terms of this BUSINESS ASSOCIATE AGREEMENT (this “BAA”) apply to Springboard HealthLab (“Business Associate”) and each governmental health authority that (i) is a “covered entity” for purposes of HIPAA, (ii) provides payment to the National Alliance of State & Territorial AIDS Directors, and (iii) receives information regarding individuals that obtain services via takemehome.org (“Covered Entity”). Business Associate and Covered Entity may each be referred to hereinafter as a “Party” or collectively as the “Parties.”

RECITALS:

A. Covered Entity and Business Associate participate in an arrangement pursuant to which Covered Entity provides payment to the National Alliance of State & Territorial AIDS Directors, which funds the services provided via takemehome.org, and also receives certain information, including from Business Associate, regarding the services provided via takemehome.org (collectively, the “Arrangement”).

B. The Parties desire to enter into this BAA to reflect their understandings and obligations with regard to Protected Health Information and their compliance with the HIPAA Rules.

NOW, THEREFORE, in consideration of the mutual covenants and promises made by and between the Parties, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1) Catch-All Definition. Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Rules, including the following terms: Breach, Data Aggregation, Designated Record Set, Disclosure, Fundraising, Health Care Operations, Marketing, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2) Specific Definitions.

(a) Electronic Protected Health Information. “Electronic Protected Health Information” shall mean protected health information that is transmitted by or maintained in electronic media.

(b) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules set forth at 45 CFR Parts 160 and 164.

(c) Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(d) Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A, D and E.

(e) Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created, received, transmitted, or maintained by Business Associate on behalf of Covered Entity.

(f) Security Rule. “Security Rule” shall mean the Security Standards at 45 CFR Part 160 and Part 164, Subparts A and C.

ARTICLE 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1) Regulatory Compliance. Business Associate agrees that it shall comply with the provisions of the HIPAA Rules to the extent such regulations apply directly to Business Associate.

2.2) General. Business Associate agrees not to Use or Disclose Protected Health Information other than as permitted or required by this BAA, the Agreement, or as Required By Law.

2.3) Safeguards. Business Associate agrees to implement and use appropriate administrative, physical and technical safeguards to prevent Use or Disclosure of Protected Health Information other than as permitted by this BAA and the Agreement and to comply with the applicable provisions of 45 CFR Part 164, Subpart C with respect to Electronic Protected Health Information.

2.4) Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA including any Breach.

2.5) Reporting Disclosures and Breaches. If Business Associate becomes aware of a Breach of Unsecured PHI or Security Incident involving any Use or Disclosure of Protected Health Information, Business Associate shall notify Covered Entity of such impermissible Use or Disclosure of Protected Health Information within a reasonable period of time. This BAA serves as an ongoing notice to Covered Entity that Business Associate’s network system regulatory experiences “pings,” port scans, and similar exploratory contacts, none of which result in a successful access to Business Associate’s systems.

2.6) Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a Subcontractor, that creates, receives, maintains, or transmits Covered Entity’s Protected Health Information on behalf of Business Associate agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, including, without limitation, restrictions, conditions, and requirements regarding implementation of reasonable and appropriate safeguards to protect Electronic Protected Health Information, and to notify Business Associate of Breaches and other improper Uses or Disclosures of Protected Health Information.

2.7) Access to Protected Health Information. In the event Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate agrees to provide access to Protected Health Information in a Designated Record Set to Covered Entity in order to meet the requirements under 45 CFR § 164.524. In the event that an Individual makes a request for access directly to Business Associate, Business Associate shall notify Covered Entity of such request.

2.8) Amendment of Protected Health Information. In the event Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual. In the event a request for amendment is made directly to Business Associate by an Individual, Business Associate will notify Covered Entity of such request.

2.9) Access and Inspection. Business Associate agrees to make internal practices, books, and records, including policies and procedures relating to the Use and Disclosure of Protected Health Information available to the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the HIPAA Rules.

2.10) Accounting of Disclosures. Business Associate agrees to document Disclosures of Protected Health Information and information related to such Disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures in accordance with 45 CFR § 164.528. Business Associate agrees to provide to Covered Entity the information collected to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.11) Performance of Covered Entity Obligations. To the extent Business Associate is carrying out Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

2.12) Sale of PHI. Business Associate agrees to comply with the prohibition on the sale of Protected Health Information without an Individual's authorization and written permission of Covered Entity in accordance with the HIPAA Rules.

2.13) Marketing or Fundraising. Business Associate shall not use Protected Health Information for Marketing or Fundraising purposes unless both: (a) permitted by the Agreement or other written agreement with Covered Entity, and (b) permitted by and performed in compliance with the HIPAA Rules.

ARTICLE 3.

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1) General Use and Disclosure. Except as otherwise limited in this BAA, Business Associate may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such Use or Disclosure would not violate the Privacy Rule if done by Covered Entity.

3.2) Minimum Necessary. Business Associate shall Use and Disclose Protected Health Information in accordance with the minimum necessary requirements of the HIPAA Rules.

3.2) Use for Business Purposes. Business Associate may Use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

3.3) Disclosure for Business Purposes. Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate, provided that such Disclosures are (a) Required By Law; or (b) Business Associate obtains reasonable assurances, prior to Disclosure, from the person to whom the information will be Disclosed that it will remain confidential and be 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.4) Data Aggregation. Business Associate may Use Protected Health Information to provide Data Aggregation services as permitted by the HIPAA Rules.

3.5) De-Identification. Business Associate may de-identify any and all Protected Health Information, provided that such de-identification is performed in accordance with 45 CFR § 164.514(b).

ARTICLE 4. OBLIGATIONS OF COVERED ENTITY

4.1) Notification to Business Associate. Covered Entity shall notify Business Associate of: (i) any limitation(s) in its Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information; (ii) any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information; and (iii) any restriction to the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

4.2) Requests. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

4.3) Limitations. Covered Entity shall limit disclosure of Protected Health Information to Business Associate to only that Protected Health Information which is reasonably required for Business Associate to perform the services under the Agreement or otherwise required by law.

ARTICLE 5. TERM AND TERMINATION

5.1) Term. This BAA shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Article 5.

5.3) Effect of Termination. Except as provided in paragraph (b) of this section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity that the Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

ARTICLE 6. MISCELLANEOUS

6.1) Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.

6.2) Survival. Section 5.3 of this BAA shall survive the termination of the Agreement.

6.3) Interpretation. Any ambiguity in this BAA shall be resolved to permit the Parties to comply with the HIPAA Rules.

6.4) Notifications. Any notices required or permitted under this Agreement shall be deemed effective (a) on the day when personally delivered to a Party, or (b) if sent by registered or certified mail, return receipt requested, on the third business day after the day on which mailed, postage prepaid, to such Party at the address set forth in the Agreement. Either Party may change its address for notices under this Section by a written notice to the other Party given in accordance with this Section.