

## **BUSINESS ASSOCIATE AGREEMENT**

This **Business Associate Agreement** (the “Agreement”), is made effective as of the sign up date on the login information page of the CarePICS.com website, by and between CarePICS, LLC with an office at 6300 Westgate Road, Suite A, Raleigh, NC 27617 (the “Business Associate”) and the CarePICS, LLC Network Partner (the “Covered Entity”) with name and location(s) as entered in the Network Partner Registration page located at CarePICS.com. All information entered by Covered Entity located on the Network Partner Registration page of CarePICS.com is hereby incorporated into this Agreement by reference and made a part hereof. The purpose of this Agreement is to comply with the Federal Standards for Privacy of Individually Identifiable Health Information, located at 45 C.F.R. parts 160 and 164, Subparts A and E (the “Privacy Rule”); Part 164, Subparts A and C (the “Security Rule”) for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (collectively referred to as “HIPAA”).

### **RECITALS**

**WHEREAS**, Business Associate provides professional services to or on behalf of Covered Entity;

**WHEREAS**, in connection with these services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the Privacy Rule;

**WHEREAS**, the Privacy Rule and Security Rule requires that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity; and

**WHEREAS**, the purpose of this Agreement is to comply with the requirements of the Privacy Rule and Security Rule and the state law of the jurisdiction of the Covered Entity.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. **Definitions.** Terms used herein, but not otherwise defined, shall have meaning ascribed by 45 C.F.R. parts 160 and 164.

1. **Designated Record Set.** “Designated Record Set” shall mean a group of records maintained by or for a covered entity, as defined by the Privacy Rule, that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make

decisions about Individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

2. **Individual.** “Individual” shall mean the person who is the subject of the protected health information.
3. **Network Associate.** Network Associate shall mean Covered Entities, employees, or Business Associates of the Covered Entity that are identified by Covered Entity to Business Associate as eligible to receive Covered Entity’s PHI using the Services.
4. **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164, subparts A and E.
5. **Protected Health Information (“PHI”).** “Protected Health Information” or PHI shall mean individually identifiable health information that is transmitted or maintained in any form or medium.
6. **Required by Law.** “Required by Law” shall mean a mandate contained in law that compels a use or disclosure of PHI.
7. **Security Rule.** “Security Rule” shall mean the Standards for the Security of Electronic Protected Health Information at 45 C.F.R. part 164, subparts A and C as they may be amended from time to time.
8. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her Designee.

**B. Purposes for which PHI May Be Disclosed to Business Associate.** In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of providing professional services related to the storage and transmission of PHI owned by the Covered Entity to and among Network Associates designated by the Covered Entity to the Business Associate using the CarePICS® application (the “Professional Services”).

**C. Obligations of Covered Entity.** If deemed applicable by Covered Entity, Covered Entity shall:

1. provide Business Associate a copy of its Notice of Privacy Practices (“Notice”) produced by Covered Entity in accordance with 45 C.F.R. 164.520 (“Notice of Privacy Practices”) as well as any changes to such notice;

2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;
3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522;
4. notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate; and
5. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI;
6. abide by the Terms of Use for CarePICS.com in regard to Services provided by Business Associate; and,
7. limit Services to Network Associates and to ensure that all Network Associates are eligible to receive PHI.

**D. Obligations of Business Associate.** Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the Privacy Rule and Security Standards applicable to business associates (as defined by the Privacy Rule and Security Rule), including:

1. **Use and Disclosure of PHI.** Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide the Professional Services to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the Privacy Rule if used or disclosed by Covered Entity. Provided, however, Business Associate may use PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate may disclose PHI received by it in its capacity as a business associate for such purposes if the disclosure is required by law or Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached. Business Associate shall in all such cases:
  - (a) provide information to members of its workforce using or disclosing PHI regarding the confidentiality obligations Required by Law, and this Agreement; and

- (b) agree to notify the designated Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Rule.
2. **Data Aggregation.** In the event that Business Associate works for more than one Covered Entity, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the Privacy Rule.
  3. **De-identified Information.** Business Associate may use and disclose de-identified health information if (i) the use is disclosed to Covered Entity and permitted by Covered Entity in its sole discretion and (ii) the de-identification is in compliance with 45 C.F.R. §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b).
  4. **Marketing Uses of Information.** Business Associate shall not use or disclose PHI for any marketing communication.
  5. **Safeguards.** Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by Law. Business Associate shall implement administrative, physical and technically sound safeguards, equivalent to encryption, that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
  6. **Minimum Necessary.** Business Associate shall attempt to ensure that all uses and disclosures of PHI are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.
  7. **Disclosure to Agents and Subcontractors.** If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement and Required by Law. Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall require all such subcontractors to execute business associate agreements that comply with HIPAA. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of

the agent or subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

8. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity Business Associate agrees as follows:
- (a) **Individual Right to Copy or Inspection.** Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate shall permit access according to its policies and procedures implementing the Privacy Rule.
  - (b) **Individual Right to Amendment.** Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.
  - (c) **Accounting of Disclosures.** Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.

9. **Internal Practices, Policies and Procedures.** Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the Privacy Rule and Security Rule, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.
10. **Notice of Privacy Practices.** Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.
11. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
12. **Authorization for Electronic Disclosure of PHI.** Business Associate shall ensure that it has obtained an Individual's authorization for the electronic disclosure of PHI prior to the electronic disclosure except when made pursuant to this Agreement and for treatment, payment and operations.
13. **Compliance with Privacy Rule and Security Rule.** Business Associate agrees to review and understand the Privacy Rule and Security Rule as they apply to Business Associate, and to comply with the applicable requirements of the Privacy Rule and Security Rule, as well as any applicable amendments.
14. **Security Incident, Breach of Unsecured PHI, Unauthorized Disclosures.** Business Associate agrees to report to Covered Entity orally and in writing of (i) any use or disclosure of PHI that is not authorized by this Agreement; (ii) any breach of unsecured PHI, as that term is defined in HIPAA, in a manner that is compliant with 45 C.F.R. 164, Subpart. D; and any security incident, as defined in 45 C.F.R. Subpart C, section 164.304, involving or potentially involving the covered entity's PHI of which Business Associate becomes aware. Such written report shall be delivered within five (5) business days from date of discovery of the disclosure, breach or security incident. Business Associate shall cooperate and make its best efforts to mitigate the effects of any such disclosure, breach or security incident. Business Associate shall pay for the full cost of breach

notification and reasonable mitigation expenses for any breach for which it is responsible.

15. **Request for Electronic Health Record.** If an individual requests in writing a copy of the individual's electronic health record, Business Associate shall provide the electronic health record to the Individual within 15 business days of receiving the request and in electronic format unless the individual consents otherwise.
16. **Training of Business Associate's Employees.** Business Associate shall provide a training program to its employees regarding HIPAA/HITECH and state laws (if necessary) concerning PHI that is specifically tailored to Business Associates' course of business and each employee's scope of employment with Business Associate. Business Associate shall maintain documentation of each employee's signed verification of attendance in such training program and provide to Covered Entity upon request.
17. **Compliance with Privacy Rule.** For any task delegated by Covered Entity to Business Associate under this Agreement or the professional services agreement between Covered Entity and Business Associate, Business Associate shall comply with the Privacy Rule in performing such delegated task.

**E. Term and Termination.**

1. **Term.** This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. **Termination for Breach.** If Business Associate breaches any provision in this Agreement, Covered Entity may, at its option, access and audit the records of Business Associate related to its use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as Covered Entity may determine is necessary to ensure compliance with this Agreement, or Covered Entity may terminate this Agreement on a date specified by Covered Entity.
3. **Effect of Termination.** Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI. This Section E.3 shall survive termination of this Agreement.

**F. Miscellaneous.**

1. **Indemnification.** Each Party is solely responsible for any and all liabilities and damages to persons and/or property arising out of its acts or omissions, including its failure to appropriately perform its duties and obligations under this Agreement. Neither Party is responsible for the acts or omissions of the other Party. Business Associate, as an Indemnitor, is obligated to INDEMNIFY and DEFEND Covered Entity (which, together with that Party's officers, directors, employees, affiliates and other related parties, are herein called, an "Indemnitee") against, and HOLD Covered Entity HARMLESS from, any and all claims, losses, liabilities, judgments, demands or causes of action, including all reasonable legal fees and other expenses of the Covered Entity incidental thereto, for injury to person or property, penalties, fines, sanctions, or similar liabilities (individually a "Claim", and collectively "Claims"), and caused by Business Associate's acts, omissions or negligence, or the acts, omissions or negligence of any employee, contractor, agent or related party of Business Associate. The provisions contained in this Section F.1 shall survive the termination of this Agreement.
  - (a) Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.
  - (b) These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.
2. **Mitigation.** If Business Associate violates this Agreement or the Privacy Rule or Security Rule, Business Associate agrees to mitigate any damage caused by such breach.
3. **Rights of Proprietary Information.** Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. **Notices.** Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices to Business Associate shall be



addressed as recited above. Notices to the Covered Entity shall be delivered to the registered address of Covered Entity at CarePICS.com.

5. **Amendments.** This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity's to comply with the requirements of the Privacy Rule and Security Rule.
6. **Choice of Law.** This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of North Carolina, without regard to applicable conflict of laws principles.
7. **Assignment of Rights and Delegation of Duties.** This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
8. **Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
9. **No Waiver.** Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
10. **Equitable Relief.** Any disclosure of misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

11. **Severability.** The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
12. **No Third Party Beneficiaries.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
13. **Headings.** The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.
14. **Entire Agreement.** This Agreement, together with the all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.
15. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and Security Rule. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the Privacy Rule and Security Rule.
16. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

**IN WITNESS WHEREOF**, the parties have agreed to this Agreement with the intention to be legally bound hereby on the date indicated on the Network Partner Registration page located at CarePICS.com by clicking on the check box located on the Network Partner Registration page located at CarePICS.com.