

Business Associate Addendum

This Business Associate Addendum (the **BAA**) forms part of, and is incorporated into and governed by, Our [Terms of Service](#) (the **Terms**). Together this BAA and the Terms form a legally binding agreement a legally binding agreement between Exclaimer LLC, a Delaware limited liability company (**We, Us, or Our**) and the customer entity set out in the signature block below (**you, your**). This BAA supplements the Agreement solely where PHI subject to HIPAA is processed by Us in delivering the Services to you.

Through your use of the Services you may Disclose to Us information that may include PHI. We may therefore at times act in a limited capacity as a Business Associate on behalf of you in your role as a Covered Entity.

If there is any conflict between this BAA and the Terms in respect of Our obligations in relation to PHI subject to HIPAA then the terms of this BAA control, In this BAA: (a) the terms including, includes, without limitation, e.g. or similar expressions are illustrative and do not limit the scope of words following them; (b) references to writing or written include email; and (c) an obligation not to do something includes an obligation not to allow that thing to be done. THE INDIVIDUAL ACCEPTING THESE TERMS WARRANTS AND REPRESENTS THAT THEY HAVE AUTHORITY TO BIND THE COUNTERPARTY TO THESE TERMS. IF THEY DO NOT HAVE SUCH AUTHORITY, THEY MUST NOT ACCEPT THESE TERMS.

1. DEFINITIONS

Agreement: has the meaning given in the Terms.

Business Associate: the meaning given in 45 CFR § 160.103 of HIPAA.

Covered Entity: the meaning given in 45 CFR § 160.103 of HIPAA.

Disclosure: the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information. **Disclose** shall be interpreted accordingly.

HIPAA: The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 as amended by Subtitle D (sections 13400 -13424) of the Health Information Technology for Economic and Clinical Health Act (HITECH).

HIPAA Privacy Rule: the Privacy Rule, Security Rule and Breach Notification Rule as found in 45 CFR Parts 160 and 164.

Marketing: the meaning given in 45 CFR § 164.502.

PHI: the meaning given in 45 CFR § 160.103 of HIPAA, except that where used in this BAA PHI shall mean only that PHI actually received by Us or processed or transmitted by Us through your use of the Services.

Unsuccessful Security Incident: a security incident in relation to the Services that does not result in unauthorised Use or Disclosure of your PHI.

Use: the meaning given in 45 CFR § 160.103 of HIPAA

2. OUR RESPONSIBILITIES

2.1 **Use and Disclosure.** If, and to the extent that, We act as a Business Associate on behalf of you in your role as a Covered Entity then We may Use and Disclose PHI in order to perform Our obligations under this BAA and the Terms. Any such Use or Disclosure by Us is not permitted if it would violate HIPAA if carried out by you.

2.2 **Controls.** Where We Use or Disclose PHI in accordance with Section 2.1, We shall: (a) not Use or Disclose PHI other than as permitted or required by the Terms, this BAA, applicable law, or your instructions; (b) use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI not permitted by this BAA (including, where applicable, complying with 45 CFR Part 164 Subpart C in respect of Security Standards for the Protection of Electronic Protected Health Information).

2.3 **Management and Administration.** We may Use and Disclose PHI for Our proper management and

administration, and to comply with legal obligations and responsibilities. If PHI is Disclosed We will obtain: (a) reasonable assurances from the recipient that the Disclosed PHI will remain confidential and only further Used or Disclosed as required by law or for the purposes for which it was disclosed to the recipient; and (b) confirmation that the recipient will notify Us of any instances that it becomes aware of where the confidentiality of the Disclosed PHI has been compromised.

2.4 **No marketing.** We shall not: (a) use PHI for Marketing; or (b) violate the prohibition on the sale of PHI as set out in 45 CFR § 164.508(4).

2.5 **Our Business Associates.** In accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2) of HIPAA, We will require that any relevant sub-processors who act as Business Associates on Our behalf in the delivery of Our Services to you maintain, transmit or store PHI: (a) subject to contractual terms substantially similar to the restrictions and conditions set out in this BAA; and (b) use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI not permitted by this BAA (including, where applicable, complying with 45 CFR Part 164 Subpart C in respect of Security Standards for the Protection of Electronic Protected Health Information).

3. YOUR RESPONSIBILITIES

3.1 As between you and Us, any PHI Used or Disclosed under the terms of this BAA through your use of the Services shall be deemed to be your exclusive property (or that of your licensors). In no event will We claim any rights with or in respect to it.

3.2 The Services and the use of them by Users does not constitute a prohibited Use or Disclosure under 45 CFR § 160.1502(a) of HIPAA. You are solely responsible for obtaining any necessary consents, authorizations and permissions necessary to permit your use of the Services.

3.3 You are responsible at all times for your and Users' compliance with HIPAA, including the measures that you take to protect PHI and electronic PHI.

3.4 You shall not ask Us to Use or Disclose PHI in a manner that would not be permitted under HIPAA if such Use or Disclosure were carried out by you or another Covered Entity (unless such Use or Disclosure is permitted by a Business Associate in accordance with HIPAA).

3.5 YOU MUST NOT INCLUDE PHI OR ELECTRONIC PHI IN ANY: (A) SUPPORT REQUESTS THAT YOU MAKE THROUGH OUR SUPPORT SERVICES; AND (B) INPUTS THAT YOU MAKE WHEN USING ANY AI FEATURES.

3.6 Contact. Reports, notifications and other notices by Us under this BAA may be sent to you electronically. You must therefore provide Us with an appropriate contact name, title, role, email address, contact telephone number and the name of the organization(s) for which they are responsible. You must ensure that this information remains up-to-date throughout the term of this BAA. FAILURE TO KEEP CONTACT INFORMATION UP-TO-DATE MAY DELAY OR INHIBIT OUR ABILITY TO PROVIDE YOU WITH INFORMATION AND NOTIFICATIONS AND WE SHALL HAVE NO LIABILITY WHERE WE ARE UNABLE TO DO SO AS A RESULT OF YOUR FAILURE TO COMPLY WITH THIS SECTION 3.6.

4. REPORTING AND REQUESTS

4.1 Reporting. If, and to the extent that, We act as a Business Associate on behalf of you in your role as a Covered Entity then We shall report to you any of the following of which We become aware: (a) Use or Disclosure not permitted or required by this BAA; (b) in accordance with 45 CFR § 164.410 of HIPAA, breaches of unsecured PHI; and (c) security incidents. Notice is hereby deemed given in respect of all Unsuccessful Security Incidents, and We are not required to provide any further notice of them. Any report made by Us under this Section, and any response by Us to any such issue is not, and will not be deemed to be, any admission (express or implied) by Us or any of Our affiliates or sub-processors of fault, liability or responsibility.

4.2 Disclosure to the Secretary. We shall make Our internal practices, books and records relating to PHI that we Use or Disclose in accordance with the terms of this BAA available to the Secretary of the US Department of Health and Human Services for the purposes of determining your compliance with the HIPAA Privacy Rule. Such disclosures shall at all times be subject to attorney-client and other applicable legal privileges.

4.3 Limitations. You acknowledge and agree that the Services do not consist of regulator access to or management of PHI by Us or any sub-processor Business Associate. As a result, you acknowledge and expressly agree that given the nature of the Services We: (a) will not be able to make available PHI in accordance with, and as required by, 45 CFR § 164.524; (b) cannot make PHI available for amendment or incorporate amendments to PHI in accordance with, or as required by, 45 CFR § 164.526; and (c) cannot make PHI available for the purposes of accounting of Disclosures as required by 45 CFR § 164.528. You therefore expressly acknowledge that you will be solely responsible for compliance with these requirements.

5. TERM; SUSPENSION; TERMINATION

5.1 Start. This BAA comes into force on the date of the first Quote signed or accepted by you for access to the Services as a result of which We will Use and Disclose PHI as a Business Associate on behalf of you in your role as a Covered Entity. This BAA is incorporated by reference into the Terms applicable to such Quote.

5.2 Term. This BAA remains in force from the date specified in Section 5.1 until the earlier of: (a) termination in accordance with Section 5.3; (b) Us ceasing to act as a Business Associate on your behalf in relation to your and Users' use of the Services; or (c) termination or expiry of the applicable Quote.

5.3 Termination. This BAA may be terminated by either party to it immediately if the other party is in material breach of this BAA and such breach: (a) is not capable of remedy; or (b) has not been remedied within 30 calendar days of written notice from the party not in breach requiring it to be remedied.

5.4 Consequences. Without prejudice to the Terms following termination or expiry of this BAA, We will securely destroy any PHI in your accounts with Us to the fullest extent technically possible in the circumstances. We will have no liability to you for its destruction and disposal. If and to the extent such return or destruction is not possible for whatever reason, We will extend the protections of this BAA to the relevant PHI and limit further Uses and Disclosures to those purposes that make the destruction of the information not possible.

6. GENERAL

6.1 Conflicts. Except where this BAA conflicts with the Agreement (in which case the terms of this BAA shall control solely with respect to the subject matter of this BAA), all other provisions of the Agreement remain unchanged and unaffected.

6.2 Third-party beneficiaries. There are no third-party beneficiaries to this BAA except that Our Affiliates may enforce the terms of Section 6.5.

6.3 Interpretation. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with the mandatory provisions of HIPAA. Both parties agree that this BAA shall be interpreted in favor of their collective intent to comply with HIPAA and therefore any ambiguity shall be resolved in favor of a meaning that complies, and is consistent with, HIPAA.

6.4 Changes. Variations and amendments to this BAA may not be made orally. This BAA may be amended by Us from time to time where necessary to comply with changes to applicable law or to reflect how the Services operate (provided that We may not diminish the protections afforded under the previous version). This Section shall not apply to any information referred to at a URL within this BAA which may be updated from time to time by Us.

6.5 Liability. Our liability under and in connection with this BAA is subject to the limitations on liability contained in the Terms.

6.6 Governing Law and Jurisdiction. This BAA, and any matters arising in relation to it, shall be governed by and interpreted in accordance with the laws of the State of Delaware (without regard to choice of conflict of law rules), and the Delaware Court of Chancery shall have exclusive jurisdiction over any claims, disputes, actions or proceedings of any kind whatsoever arising under or relating to this BAA (including non-contractual disputes and claims).

SIGNED FOR AND ON BEHALF OF:

Exclaimer LLC

.....
Customer entity

Signed:

Signed:

Name:

Name:

Role:

Role:

Date:

Date: