

Business Associate Agreement

This Business Associate Agreement (“BA Agreement”) is effective upon the effective date of the Software as a Service Agreement (the “Agreement”). As used herein, “Agreement” includes the Agreement and all exhibits and attachments thereto, including this BA Agreement. This BA Agreement is made by and between Integrated Health Partners, hereinafter referred to as “Covered Entity”, and Texture Health, LLC (“Texture”), hereinafter also referred to as “Business Associate”, (individually, a “Party” and collectively, the “Parties”). Execution of the Agreement is deemed to constitute execution of this BA Agreement.

Business Associate will have access to Protected Health Information from or on behalf of Covered Entity, and the Parties desire to satisfy their respective obligations under the Health Insurance Portability and Accountability Act of 1996, and the implementing regulations at 45 C.F.R. Parts 160 and 164, as amended (“collectively, “HIPAA”) and the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations (collectively, “HITECH”). “HIPAA-HITECH” refers collectively to HIPAA and HITECH.

The parties agree, as of the effective date of this BA Agreement, to abide by the provisions of this BA Agreement with respect to Covered Entity’s Protected Health Information or Electronic Protected Health Information (as such terms are defined below).

1. **DEFINITIONS**

Terms used but not otherwise defined in this BA Agreement have the meaning ascribed to those terms in HIPAA-HITECH.

1.1 **Breach**. “Breach” means the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information subject to the exceptions set forth in 45 C.F.R. 164.402.

1.2 **Business Associate**. “Business Associate” has the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this BA Agreement, shall mean the entity named above.

1.3 **Covered Entity**. “Covered Entity” has the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and in reference to the party to this BA Agreement, shall mean the entity named above.

1.4 **Electronic Protected Health Information**. “Electronic Protected Health Information” or “EPHI” has the same meaning as the term “Electronic Protected Health Information” at 45 C.F.R. 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

1.5 **Individual**. “Individual” has the same meaning as the term “Individual” at 45 C.F.R. 160.103 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

1.6 **Privacy Rule**. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164.

1.7 Protected Health Information. “Protected Health Information” or “PHI” has the same meaning as the term “Protected Health Information” at 45 C.F.R. 106.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

1.8 Required By Law. “Required By Law” has the same meaning as the term “Required By Law” at 45 C.F.R. 164.103.

1.9 Secretary. “Secretary” means the Secretary of the U.S. Department of Health and Human Services or his or her designee.

1.10 Security Rule. “Security Rule” means the Security Standards at 45 C.F.R. parts 160 and 164.

1.11 Unsecured Protected Health Information. “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary.

2. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement, this BA Agreement, as otherwise set forth in writing by Covered Entity, or as Required By Law.

2.2 Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Privacy Rule, Security Rule, and the HITECH Act.

2.3 Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this BA Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information and any security incident of which it becomes aware.

2.4 Business Associate agrees to, following the discovery of any Breach of Unsecured Protected Health Information, notify the Covered Entity without unreasonable delay, and no later than 30 days from the date that Business Associate discovers the Breach or should have discovered it using reasonable diligence. Such notice will include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.

2.5 Security Incident Notification. Business Associate agrees to, upon learning of a Security Incident, report such Security Incident to Covered Entity in accordance with Section 2.4 above. Covered Entity and Business Associate agree that this Section 2.5 constitutes the only notice of the ongoing existence and occurrence of attempted, but unsuccessful, Security Incidents (“Unsuccessful Security Incidents”). Unsuccessful Security Incidents include activity such as pings and other unsuccessful broadcast attacks on a Party’s firewall, port scans, routine unsuccessful log-on attempts, denial of service attacks, malware, and any combination of the above, so long as no such event may reasonably be expected to result in a compromise of or material interference

with Business Associate's information security, tools, hardware, conduits, or technology, and/ or result in unauthorized access, use, disclosure, modification, or destruction of PHI.

2.6 Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate on behalf of Covered Entity agrees to the same restrictions, conditions, and requirements that apply through this BA Agreement to Business Associate with respect to such information.

2.7 If applicable, Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual or an individual's designee in order to meet the requirements under 45 C.F.R. 164.524.

2.8 If applicable, 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 C.F.R. 164.526 at the request of Covered Entity, and in a reasonable time and manner or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

2.9 Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and the HITECH Act.

2.10 Business Associate agrees to restrict disclosure of an Individual's Protected Health Information as would be required of or agreed to by Covered Entity at the request of an Individual, in a reasonable time and manner specified by Covered Entity.

2.11 Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with this BA Agreement, 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 C.F.R. 164.528.

2.12 To the extent Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate agrees to comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General Use and Disclosure Provisions

- (a) Except as otherwise limited in the Agreement, Business Associate may use, disclose or request Protected Health Information to perform or assist with the performance of functions, activities, or services for, or on behalf of, Covered Entity as specified in this BA Agreement, the Agreement, or as otherwise set forth in writing by Covered Entity, provided that such use, disclosure, or request would not violate HIPAA -HITECH.
- (b) Business Associate may use or disclose Protected Health Information as Required by Law.

- (c) Business Associate may create limited data sets from Protected Health Information in accordance with the requirements of 45 C.F.R. § 164.514(e)(2).
- (d) De-identified Data. Business Associate may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law. Business Associate shall retain ownership of any de-identified PHI it creates using Covered Entity's PHI.
- (e) Business Associate agrees to make uses, disclosures, and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures, which Covered Entity shall deliver to Business Associate within five (5) business days of execution of the Agreement.
- (f) Business Associate may not use or disclose Protected Health Information in a manner that would violate the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set forth below in Section 3.2.
- (g) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

3.2 **Specific Use and Disclosure Provisions**

- (a) Except as otherwise limited in the Agreement, 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.
- (b) Except as otherwise limited in the Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in the Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

4. **OBLIGATIONS OF COVERED ENTITY**

4.1 **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

- (a) Business Associate shall comply with any applicable notice of privacy practices, provided that Covered Entity notifies Business Associate in writing of the notices of privacy practices that Business Associate shall follow. Covered Entity shall promptly notify Business Associate in writing of the amendment to or termination of any such notice of privacy practices

- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an 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.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- (d) Covered Entity shall obtain any consent, authorization or permission that may be required by the Privacy Rule or applicable state laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to an Individual.

4.2 **Permissible Requests by Covered Entity**

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 except for uses and disclosures under Section 3.2 of this BA Agreement.

5. **TERMINATION**

- 5.1 **Term.** This BA Agreement is effective as of the Agreement Effective Date, and will terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created, received, or maintained 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 Section 5.4.
- 5.2 **Termination for Cause.** Upon either party's knowledge of a material breach by the other party, the non-breaching party may either:
 - 1. Provide written notice to the breaching party and a reasonable opportunity for breaching party to cure the breach, or end the violation and terminate this BA Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party; or
 - 2. Immediately terminate this BA Agreement if the breaching party has breached a material term of this BA Agreement and cure is not possible.
- 5.3 **Right to Terminate on Change in Law.** Either party may terminate this BA Agreement as provided by Section 7.2 of this BA Agreement if a statute or regulation or amendment to a statute or regulation affects the obligations of a party under this BA Agreement. A party may exercise this termination right by giving the other party written notice of such termination at least 90 days before the compliance date for such statute or regulation or amendment to statute or regulation.
- 5.4 **Effect of Termination.**

- a. Except as provided in paragraph (b) of this Section 5.4, upon termination of this BA Agreement, for any reason, Business Associate agrees to return or destroy all Protected Health Information received from Covered Entity, or created, received, or maintained by Business Associate on behalf of Covered Entity. This provision applies to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate will not retain any copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate agrees to provide to Covered Entity notification of the conditions that make such return or destruction infeasible. If Covered Entity agrees that such return or destruction is infeasible, Business Associate agrees to extend the protections of the Agreement and this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. **MITIGATION**

- 6.1 **Mitigation.** Business Associate agrees to use commercially reasonable efforts to mitigate, to the extent practicable, any harmful effect known to Business Associate resulting from a use or disclosure of Protected Health Information by Business Associate or its agents in violation of the terms of this BA Agreement.

7. **MISCELLANEOUS**

- 7.1 **Regulatory References.** A reference in this BA Agreement to a Section in HIPAA or the HITECH Act means the Section as in effect or as amended.
- 7.2 **Amendment.** The Parties agree to meet and confer regarding amendment of this BA Agreement from time to time as is necessary for either Party or both Parties to comply with the requirements of HIPAA and the HITECH Act. Any amendment, however, must be mutually agreed upon by the Parties in writing. In the event the Parties are, for any reason, unable to agree on an acceptable amendment, either Party may terminate this BA Agreement on written notice to the other Party.
- 7.3 **Survival.** All provisions of this BA Agreement which are by their nature intended to survive the expiration or termination of this BA Agreement will survive such expiration or termination of this BA Agreement.
- 7.4 **Conflicts and Interpretation.** The terms and conditions of this BA Agreement will override and control any conflicting term or condition of the Agreement or any other agreement or understanding between the parties. Any ambiguity in this BA Agreement shall be resolved to permit the Parties to comply with the HIPAA and the HITECH Act as may be amended from time to time.
- 7.5 **Construction of Terms.** The terms of this BA Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the HITECH Act issued by HHS or the Office for Civil Rights from time to time.

- 7.6 No Third Party Beneficiaries. Nothing in this BA Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 7.7 Notices. Any notice that a party is required or desires to give under this BA Agreement shall be delivered as set forth in the Notices provision of the Agreement.

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