

eCare21.com – Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into on _____ (date), by and between _____ (a “Covered Entity” under the HIPAA Privacy Rule referred to as Covered Entity), and eCare21.com (a “Business Associate” under HIPAA, referred to as Business Associate).

Covered Entity and Business Associate mutually agree to incorporate the terms of this Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) (“HIPAA”) into their Service Agreement.

1. Definitions

1.1 The following terms used in this Agreement shall have the same meaning 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 (PHI),
Required By Law,
Secretary,
Security Incident,
Subcontractor,
Unsecured Protected Health Information, and
Use.

1.2 The following specific terms are specifically defined:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this agreement.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103 in reference to eCare21.com.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 as amended by the HITECH and HIPAA Omnibus rules and future changes to the HIPAA Security and Privacy Rules.

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(d) Service Agreement. “Service Agreement” refers to the contract for services that this Business Associate Agreement (BAA) covers. The Service Agreement specifies the level of service and obligations of the Business Associate that involves the creation, receipt, maintenance and/or transmission of the Covered Entity’s PHI.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Service Agreement or as required by law;
- (b) Notify the Covered Entity of any changes to the technical, physical, or administrative protections for Covered Entity’s PHI that could affect maintaining the confidentiality, integrity or availability of PHI;
- (c) Use appropriate safeguards (including proper policies and procedures as well as training), and comply with Subpart C of 45 CFR Part 164 with respect to Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Service Agreement;
- (d) Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Service Agreement of which it becomes aware, including impermissible uses and disclosure, and breaches of unsecured Protected Health Information as required at 45 CFR 164.410. The Business Associate will also report any security incident of which it becomes aware;
 - a. Business Associate will notify the Covered Entity of any impermissible use and/or disclosure of PHI within 5 days of discovery of such impermissible use and/or disclosure. Furthermore, the Business Associate will provide Covered Entity with the completed analysis of said impermissible use and/or disclosure as required by the HIPAA Security and Privacy Rules within 30 days of discovery of the impermissible use and/or disclosure;
 - b. In the event that the Business Associate reasonably concludes with good faith that the impermissible use and/or disclosure of PHI is a breach of PHI by the Business Associate, then the Business Associate will defer all decisions on coordinating and performing the required patient, public (including, but not limited to web and media), and/or HHS Office of Civil Rights notifications to the Covered Entity, and the costs of such notification shall be covered by the Business Associate;
 - c. In the event that the Business Associate reasonably concludes with good faith that the impermissible use and/or disclosure of PHI is not a breach of PHI by the Business Associate, then the Covered Entity may review the Business Associate’s rationale for the analysis, and, if necessary, reasonably dispute the conclusion of the Business Associate and reclassify the

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impermissible use and/or disclosure of PHI as a breach. If such reclassification becomes necessary and is the fault of the Business Associate, the Business Associate will defer to the Covered Entity and cover the expense of notification as described in 2.(d) b;

- d. Business Associate will report substantive security incidents to Covered Entity within 10 days of the occurrence of said security incident. The report will include the explanation of the incident, the response of the Business Associate, and the remediation efforts to avoid similar incidents in the future.
- e. Business Associate will report on remediation efforts to avoid future security incidents and/or impermissible uses and/or disclosures of PHI on at least a quarterly basis until such remediation efforts have been completed;

(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 the Covered Entity's PHI including but not limited to 2.(c);

(e) 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 within 7 days of the Covered Entity request;

In the event that the Business Associate receives a request for PHI in a designated record set directly from or on behalf of the patient, the Business Associate shall coordinate with the Covered Entity to assure that the proper materials are provided to the patient. The Business Associate will respond to the patient directly, but shall send a copy of the information and patient communications to the Covered Entity at the same time the information is provided to the patient.

(f) 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 within 5 days of Covered Entity approval. The Business Associate will provide documentation on the completion of such amendments;

In the event that the Business Associate receives an amendment request directly from or on behalf of the patient, the Business Associate shall forward such request to the Covered Entity within 5 days of receipt of the amendment request. The Covered Entity provider has the right to review the amendment request. The Business Associate will only make amendments to PHI as approved by the Covered Entity and document such approved changes to the Covered Entity when completed. The Covered Entity will communicate with patients on the status and disposition of the amendment requests.

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(g) Maintain and 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 within 5 days of the receipt of such a request from the Covered Entity;

In the event that the Business Associate receives a request for an accounting of disclosures directly from or on behalf of the patient, the Business Associate shall respond to the patient directly within the mandated timeframe, but shall send a copy of the accounting of disclosures and patient communications to the Covered Entity at the same time the accounting of disclosures is provided to the patient.

(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 the Business Associate's internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Make the Business Associate's internal practices, books, and records relevant to the Covered Entity and/or the Service Agreement available to the Covered Entity for reviewing Business Associate's compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose Protected Health Information as necessary to perform the services set forth in the Service Agreement associated with this Business Associate Agreement.

(b) The Business Associate is not authorized or permitted to de-identity the Covered Entity's Protected Health Information, in accordance with 45 CFR 164.514(a)-(c), for any reason or purpose without the express written consent of the Covered Entity at the Covered Entity's sole discretion.

(c) The Business Associate will not send unsecured PHI through email for any purpose without the written consent of the Covered Entity.

(d) Business Associate may use or disclose Protected Health Information as required by law.

(e) Business Associate agrees to use and disclosure Protected Health Information in accordance the Covered Entity's Notice of Privacy Practices and the HIPAA Privacy standards for minimum necessary use of PHI.

(f) 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, except for the specific uses and disclosures set forth below.

Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate related to the Service Agreement.

(g) Business Associate may aggregate summary information from the PHI data to use for any legal purpose as long as the data does not disclose any identifying information about the patient.

4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered Entity shall provide the Business Associate with a current copy of the Covered Entity's Notice of Privacy Practices under 45 CFR 164.520. The Business Associate is responsible for complying with the Covered Entity's Notice of Privacy Practices to the extent that the Notice of Privacy Practices may affect Business Associate's use or disclosure of Protected Health Information in fulfillment of the service responsibilities of the Business Associate.
- (b) Covered Entity shall provide the Business Associate with updated Notice of Privacy Practices as necessitated by changes to HIPAA requirements or changes to the Covered Entity. The Business Associate will make appropriate changes to comply with the updated Notice of Privacy Practices.
- (c) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual patient 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.

5. 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 Subpart E of 45 CFR Part 164 if done by Covered Entity.

6. Term and Termination

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(a) Term. The Term of this Business Associate Agreement shall be effective as of the effective date of the Service Agreement, and shall terminate on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, or the Service Agreement is terminated or completed, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Business Associate Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Service Agreement or this Business Associate Agreement and Business Associate has not cured or ended the violation within the time specified by Covered Entity.

(c) Obligations of Business Associate Upon Termination. - Upon termination of the Service Agreement or this Business Associate Agreement for any reason,

- (i) The Business Associate will support the transfer of electronic PHI in a format that will allow the Covered Entity to preserve the PHI as part of the patients designated record set. Such support will include, but not be limited to, providing the information in a usable format and allowing for adequate testing of the transfer process as well as the final transfer of such PHI to a successor environment at the Covered Entity's sole discretion. Until such final transfer of the PHI to a successor environment, the Business Associate will continue to support the Covered Entity in maintaining the integrity, accessibility and confidentiality of electronic PHI. Business Associate will be fairly compensated for such transition services as well as continuing use of Business Associate services during the transition period.
- (ii) Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information, in any form, received, created, maintained, or transmitted by the Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the Protected Health Information.
- (iii) In the event that the Business Associate cannot feasibly destroy or return any PHI created, received, maintained, or transmitted on behalf of the Covered Entity, the Business Associate will:
 1. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent impermissible use or disclosure of the Protected Health Information for as long as Business Associate retains the Protected Health Information that could not be destroyed or returned to the Covered Entity.
 2. Not use or disclose the Protected Health Information retained by Business Associate for any purpose without the written consent of the Covered Entity at its sole discretion.

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3. Update the Covered Entity on the status and disposition of the PHI that could not be feasibly destroyed or returned on at least an annual basis until such time as the PHI can be destroyed or returned.

(d) Business Associate will be solely responsible for the support of the termination process by the Business Associate's subcontractors who may have provided services in support of the Business Associate's responsibilities to the Covered Entity.

(e) Survival. The obligations of Business Associate under this Section shall survive the termination of this Business Associate Agreement.

7. Miscellaneous

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

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law as well as the services Agreement with the Covered Entity.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the date first stated above.

COVERED ENTITY:

BUSINESS ASSOCIATE

eCare21.com

By:

By:

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____