

This Business Associate Agreement ("BAA") is between Etactics, Inc. ("Business Associate") and the covered entity identified ("Covered Entity"), which is effective as of the date on which the authorized party accepting this BAA completes the electronic acceptance process and clicks the "Accept" button. The authorized party electronically accepting this BAA represents and warrants that it has the authority to bind Customer and agree to the terms and conditions of the BAA.

WHEREAS, The Parties have entered into a relationship under which Business Associate may receive, use, obtain, access or create Protected Health Information from or on behalf of Covered Entity in the course of processing, storing, displaying, translating, transmitting, printing or electronically delivering health care transactions and other patient data and communications or using it to create mockups for review (collectively, the "Services").

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the Parties agree as follows:

1. Etactics Customer Agreement:

1.1. Whether executed before or after, this BAA constitutes an "other contract" under a validly executed Etactics Customer Agreement. Any terms in the BAA that contradict the Customer Agreement are governed by the BAA.

2. Definitions: Terms used, but not otherwise defined in this Agreement, will have the same meaning as those terms in the Privacy Rule, Security Rule, and HITECH Act.

2.1. **HIPAA Rules.** "HIPAA Rules" will mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2.2. **Secretary:** "Secretary" will mean the Secretary of the Department of Health and Human Services or his or her designee.

2.3. **Security Rule.** "Security Rule" will mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, Subparts A and C.

2.4. **Subject Matter.** "Subject Matter" will mean compliance with the HIPAA Rules and with the HITECH Act.

3. Obligations and Activities of Business Associate:

3.1. Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.

3.2. Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate further agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information, as provided for in the Security Rule and as mandated by Section 13401 of the HITECH Act.

3.3. 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 Agreement. Business Associate further agrees to report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, and in a manner as prescribed herein.

3.4. Business Associate agrees to report to Covered Entity all data Breaches or compromises, whether internal or external, related to Protected Health Information, whether the Protected Health Information is secured or unsecured, of which Business Associate becomes aware.

3.5. If a Breach pertains to Unsecured Protected Health Information, then Business Associate agrees to report any such data Breach to Covered Entity within ten (10) business days of discovery of said Breach; all other compromises of Protected Health Information will be reported to Covered Entity within twenty (20) business days of discovery. Business Associate further agrees, consistent with Section 13402 of the HITECH Act, to provide Covered Entity with information necessary for Covered Entity to meet the requirements of said section, and in a manner and format to be specified by Covered Entity.

3.6. Business Associate agrees to ensure that any Subcontractor, to whom Business Associate provides Protected Health Information, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information. Business Associate further agrees that restrictions and conditions analogous to those contained herein will be imposed on said Subcontractors via a written agreement that complies with all the requirements specified in §164.504(e)(2), and that Business Associate will only provide said Subcontractors Protected Health Information consistent with Section 13405(b) of the HITECH Act.

3.7. Business Associate agrees to provide access, at the request of Covered Entity and during normal business hours, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet Covered Entity's requirements under 45 CFR §164.524, provided that Covered Entity delivers to Business Associate a written notice at least three (3) business days in advance of requesting such access. Business Associate further agrees, in the case where Business Associate controls access to Protected Health Information in an

Electronic Health Record, or controls access to Protected Health Information stored electronically in any format, to provide similar access in order for Covered Entity to meet its requirements under the HIPAA Rules and under Section 13405(c) of the HITECH Act. These provisions do not apply if Business Associate and its employees or Subcontractors have no Protected Health Information in a Designated Record Set of Covered Entity.

- 3.8. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees or Subcontractors have no Protected Health Information from a Designated Record Set of Covered Entity.
 - 3.9. Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures (collectively "Compliance Information"), relating to the Use or Disclosure of Protected Health Information and the protection of same, available to the Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules and the HITECH Act. Business Associate further agrees, at the request of Covered Entity, to provide Covered Entity with evidence that its Compliance Information ensures Business Associate's compliance with this BAA over time. Business Associate will have a reasonable time within which to comply with requests for such access and/or evidence, consistent with this Agreement. In no case will access, or evidence, be required in less than ten (10) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.
 - 3.10. Business Associate agrees to maintain necessary and sufficient documentation of Disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of such Disclosures, in accordance with 45 CFR §164.528.
 - 3.11. On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this BAA 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. Business Associate will provide said documentation in a manner and format to be specified by Covered Entity. Business Associate will have a reasonable time within which to comply with such a request from Covered Entity and in no case will Business Associate be required to provide such documentation in less than three (3) business days after Business Associate's receipt of such request.
 - 3.12. Except as provided for in this Agreement, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will redirect the Individual to the Covered Entity.
 - 3.13. To the extent that Business Associate carries out one or more of Covered Entity's obligations under the HIPAA Rules, the Business Associate must comply with all requirements of the HIPAA Rules that would be applicable to the Covered Entity.
 - 3.14. A Business Associate must honor all restrictions consistent with 45 C.F.R. §164.522 that the Covered Entity or the Individual makes the Business Associate aware of, including the Individual's right to restrict certain disclosures of protected health information to a health plan where the individual pays out of pocket in full for the healthcare item or service, in accordance with HITECH Act Section 13405(a).
4. **Permitted Uses and Disclosures by Business Associate:**
- 4.1. Except as otherwise limited by this Agreement, Business Associate may make any Uses and Disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such Use or Disclosure would not violate the Privacy Rule, or the privacy provisions of the HITECH Act, if done by Covered Entity. All other Uses or Disclosures by Business Associate not authorized by this Agreement, or by specific instruction of Covered Entity, are prohibited.
 - 4.2. Except as otherwise limited in this Agreement, 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.
 - 4.3. Except as otherwise limited in this Agreement, Business Associate may Disclose Protected Health Information for the proper management and administration of the 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - 4.4. Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B). Business Associate agrees that such Data Aggregation services will be provided to Covered Entity only wherein said services pertain to Health Care Operations. Business Associate further agrees that said services will not be provided in a manner that would result in Disclosure of

Protected Health Information to another covered entity who was not the originator and/or lawful possessor of said Protected Health Information.

- 4.5. Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).
- 4.6. Business Associate will make Uses, Disclosures, and requests for Protected Health Information consistent with the Minimum Necessary principle as defined herein.

5. **Obligations and Activities of Covered Entity.**

- 5.1. Covered Entity will notify Business Associate of the provisions and any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such provisions and limitation(s) may affect Business Associate's Use or Disclosure of Protected Health Information.
- 5.2. Covered Entity will 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 the changes or revocation may affect Business Associate's Use or Disclosure of Protected Health Information.
- 5.3. Covered Entity will 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 CFR §164.522, and also notify Business Associate regarding restrictions that must be honored under section 13405(a) of the HITECH Act, to the extent that such restrictions may affect Business Associate's Use or Disclosure of Protected Health Information.
- 5.4. Covered Entity will notify Business Associate of any modifications to accounting disclosures of Protected Health Information under 45 CFR §164.528, made applicable under Section 13405(c) of the HITECH Act, to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.
- 5.5. Covered Entity will provide Business Associate, within thirty (30) business days of Covered Entity executing this Agreement, a description and/or specification regarding the manner and format in which Business Associate will provide information to Covered Entity, wherein such information is required to be provided to Covered Entity as agreed to by Business Associate in paragraphs 3.5 and 3.11 of this Agreement. Covered Entity reserves the right to modify the manner and format in which said information is provided to Covered Entity, as long as the requested modification is reasonably required by Covered Entity to comply with the HIPAA Rules or the HITECH Act, and Business Associate is provided sixty (60) business days notice before the requested modification takes effect.
- 5.6. Covered Entity will not require Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity.

6. **Term and Termination:**

- 6.1. **Term:** The Term of this BAA will be effective as of the electronic acceptance by Customer, and will 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 Agreement.
 - 6.1.1. Covered Entity acknowledges that Business Associate will securely destroy the initial PHI provided once the mockups are created and that Business Associate is not responsible for maintaining a copy Covered Entity supplied it. Business Associate may also destroy the mockups at any time.
- 6.2. **Termination for Cause by Covered Entity:** Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity will give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this BAA and does not cure the breach or cure is not possible.
- 6.3. **Termination for Cause by Business Associate:** Upon Business Associate's knowledge of a material breach of this BAA by Covered Entity, Business Associate will give Covered Entity written notice of such breach and provide reasonable opportunity for Covered Entity to cure the breach or end the violation. Business Associate may terminate this Agreement, and Covered Entity agrees to such termination, if Covered Entity has breached a material term of this BAA and does not cure the breach or cure is not possible.
- 6.4. **Effect of Termination:**
 - 6.4.1. Except as provided in Section 6.4.2, upon termination of this BAA for any reason, Business Associate will return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to Protected Health Information that is in the possession of Subcontractors of Business Associate. Business Associate will retain no copies of the Protected Health Information.

6.4.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate will provide to Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate will extend the protections of this BAA 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.

7. **Entire Agreement:**

- 7.1. Other than an Etactics Customer Agreement, this BAA supersedes all other prior and contemporaneous written and oral agreements and understandings between Covered Entity and Business Associate regarding this Subject Matter and contains the entire agreement between the parties.
- 7.2. This BAA may be modified only by a signed written agreement between Covered Entity and Business Associate.
- 7.3. All other agreements entered into between Covered Entity and Business Associate not related to this Subject Matter remain in full force and effect.

8. **Miscellaneous:**

- 8.1. **Liability:** Customer will not hold Etactics liable for issues stemming from inaccurate data that Customer or its contractors supply to Etactics. In no event will Etactics be liable for any indirect, special, incidental, exemplary, punitive or consequential damages (including, but not limited to, lost profits, lost business opportunities, lost or damaged data, or other similar damages) arising out of or in any way related to this BAA or the Services, whether in contract, tort (including negligence) or otherwise, even if Etactics has been advised of the possibility of such damages, and whether such damages are incurred by Customer or any third party.
- 8.2. **Warranties:** Etactics will use its good faith, commercially reasonable efforts to perform the Services in a timely, professional and workmanlike manner. In the event that a documented and reproducible inconsistency in the Services is discovered, Etactics' sole responsibility will be to use commercially reasonable efforts to correct such inconsistency in a timely manner. Etactics will implement all commercially reasonable efforts to correct any problems with data transmission, processing and/or corruption or delay of data, and/or reporting of results back to Customer.
- 8.3. **No Other Warranties:** Except as expressly stated in Section 8.2, to the extent permitted by applicable law, Etactics makes no warranties whatsoever, express or implied, in connection with the Services or any work product provided in connection with this Agreement. Customer accepts all information received in connection with the Services "AS IS."
- 8.4. **Indemnification:** Customer agrees to protect, indemnify, defend, and hold harmless Etactics from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) arising from or in any way related to use of information received by Customer (or any third party) furnished by or through Etactics.
- 8.5. **Regulatory References:** A reference in this BAA to a section in the Privacy Rule, Security Rule, or HITECH Act means the section as in effect or as amended.
- 8.6. **Amendment:** The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy Rule, Security Rule, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), and the HITECH Act, and its corresponding regulations.
- 8.7. **Survival:** The respective rights and obligations of Business Associate under Section 6.4 of this BAA will survive the termination of this Agreement.
- 8.8. **Interpretation:** Any ambiguity in this BAA will be resolved to permit Covered Entity and Business Associate to comply with the Privacy Rule, Security Rule, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), and the HITECH Act, and its corresponding regulations.
- 8.9. **Severability:** If any provision or provisions of this BAA is/are determined by a court of competent jurisdiction to be unlawful, void, or unenforceable, this BAA will not be unlawful, void or unenforceable thereby, but will continue in effect and be enforced as though such provision or provisions were omitted.