

THIS BUSINESS ASSOCIATE AGREEMENT IS AN EXAMPLE ONLY AND NOT EFFECTIVE UNLESS EXECUTED BETWEEN RECEPTIONISTS, INC. AND THE SUBSCRIBING CUSTOMER.

Please contact hello@ruby.com for more information.

Business Associate Agreement

This Business Associate Agreement (“**BAA**”) is entered into by and between Ruby Receptionists, Inc. with a principal address of 805 SW Broadway, Suite 900, Portland OR 97205 (“**Business Associate**”) and the customer subscribing to our Services (“**Covered Entity**”) at a service level that complies with Health Insurance Portability and Accountability Act of 1996, the HITECH Act, and regulations promulgated thereunder (“**HIPAA**”). This BAA is made effective on date Customer signs up for HIPAA level Services (the “**Effective Date**”). Covered Entity and Business Associate are referred to herein collectively as the “Parties” and may be referred to individually as a “Party.” Unless separately defined herein, capitalized terms have the meanings specified under HIPAA.

RECITALS

- A. Covered Entity is a “covered entity” subject to HIPAA.
- B. Business Associate, pursuant to the Terms of Use between Covered Entity and Business Associate (the “**Terms of Use**”) to provide the Services (as defined in the Terms of Use), is a “business associate” of Covered Entity as that term is defined in 45 C.F.R. § 160.103, and is subject to the Security Rule and certain provisions of the Privacy Rule.
- C. Covered Entity is required by HIPAA to obtain satisfactory assurances that Business Associate will appropriately safeguard all Protected Health Information (“**PHI**”) and electronic PHI disclosed by or created or received by Business Associate on behalf of, Covered Entity.

NOW, THEREFORE, in consideration of entering into the Terms of Use and the mutual promises and agreements below and in order to comply with all legal requirements, the parties hereto agree as follows:

1. **Services.** The Covered Entity and Business Associate have entered into the Terms of Use for the Services provided by Business Associate, under which Business Associate may create, receive, use, maintain or transmit PHI from or on behalf of the Covered Entity. This BAA shall only be effective to the extent that Business Associate meets the definition of a business associate under 45 C.F.R. 160.103. This BAA is part of and hereby incorporated into the Terms of Use between Covered Entity and Business Associate. In the event of a conflict between the terms of the Terms of Use and this BAA with respect to the HIPAA Rules, this BAA shall control. Business Associate’s Services may be subject to additional, separate terms, each of which are incorporated herein by this reference.

2. **Permitted Use and Disclosure.** Business Associate may use or disclose PHI as follows:

- (a) For purposes of performing Business Associate's obligations and functions under the Terms of Use, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (b) If necessary, (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; and (iii) for the provision of Data Aggregation services relating to the Health Care Operations of Covered Entity.
- (c) If necessary, for the purposes described in Section 2(b) if: (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable written assurance from the person or entity to whom it discloses the PHI that the PHI will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- (d) Notwithstanding any contrary provisions of this BAA, Business Associate and its Subcontractors may deidentify PHI and may disclose non-personally identifiable information, provided that such disclosed information does not include a mechanism that would enable the information to be identified.

3. **Obligations of Business Associate.** In the event Business Associate creates, receives, maintains, or otherwise is exposed to PHI and otherwise meets the definition of Business Associate as defined in HIPAA, Business Associate shall:

- (a) Comply with the Security Rule (45 C.F.R. Part 160, subpart A and C, and Part 164, subparts A and C), as may be amended, and with the applicable provisions of the Privacy Rule (45 C.F.R. Part 160, subpart A and C, and Part 164, subparts A and E), as may be amended, in carrying out Business Associate's obligations under the Terms of Use;
- (b) Not use or disclose PHI other than as permitted or required by the Terms of Use or as required by law;
- (c) Make PHI available in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations to comply with a request by an Individual (as defined in 45 C.F.R. Section 160.103 and including the Individual's personal representative) for access under 45 CFR 164.524;
- (d) Make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations to comply with an Individual's request for an amendment under 45 CFR 164.526;

- (e) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations to comply with an Individual's request for an accounting of disclosures of PHI under 45 CFR 164.528;
- (f) To the extent 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 Covered Entity in the performance of such obligation(s);
- (g) Make Business Associate's internal practices, books, and records available to the United States Department of Health and Human Services for purposes of determining compliance with regulations promulgated under HIPAA;
- (h) 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 PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- (i) Maintain commercially reasonable and appropriate security safeguards for PHI and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided for by the Terms of Use and protect the confidentiality and integrity of such PHI created, received, used, maintained or transmitted from, or on behalf of the Covered Entity;
- (j) Report to Covered Entity any use or disclosure of PHI not provided for by the Terms of Use of which Business Associate becomes aware (including breaches of unsecured PHI as required by 45 CFR 164.410) and any Security Incident of which Business Associate becomes aware, in the time and manner specified under 45 C.F.R. 164.410 and within the timeframes contemplated under state law, as applicable, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security; and
- (k) Following a Data Breach, provide Covered Entity with sufficient information, as available, to permit the Covered Entity to comply with the Data Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. and to act, in cooperation with the Covered Entity, in good faith to investigate and mitigate any harm caused by any unauthorized use, Security Incident, or Data Breach.

4. Obligations of Covered Entity.

- (a) Covered entity shall notify Business Associate of any:
 - (i) Limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
 - (ii) Changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business

Associate's use or disclosure of PHI; or

- (iii) Restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 or applicable federal or state law, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall ensure and be solely responsible that it, its employees, and its end users use the Services in compliance with HIPAA, this BAA, the Terms of Use, and all instructions provided by Business Associate to Covered Entity in any form. Any use of the Services that does not meet the requirements of this Section 4(b) shall cause the following to occur:
- (i) All representations and warranties by Business Associate that the Services will appropriately safeguard PHI and electronic PHI disclosed by or created or received by Business Associate on behalf of Covered Entity or otherwise comply with HIPAA to be null and void;
 - (ii) Business Associate is not and will not be liable in any manner under any legal theory for any violation of HIPAA or other claim that arises in relation to Covered Entity's use of the Services; and
 - (iii) Business Associate may, at its option and without notice, penalty or liability to Business Associate, terminate any and all agreements with Covered Entity.
- (c) Covered entity shall not request Business Associate to collect, use, or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.
- (d) Upon request by Covered Entity, Business Associate may agree to interact with Covered Entity's proprietary software or selected third-party software, products, or other services (in each case, "**Other Software**") as part of Business Associate's provision of the Services to Covered Entity. In such case, the parties hereto agree that (i) Covered entity is solely responsible for ensuring that the Other Software is HIPAA-compliant; (ii) Business Associate shall interact with the Other Software as part of its Services to Covered Entity pursuant to Covered Entity's written instructions; (iii) Business Associate reserves the right to refuse to interact with the Other Software if doing so would, in Business Associate's sole discretion, conflicts with the Terms of Use, this BAA, HIPAA, or Business Associate's policies or protocols; (iii) Business Associate is not and will not be responsible for the provision, maintenance, or compliance of any Other Software.
5. **Prohibition on Sale of PHI.** Business Associate shall not receive or provide direct or indirect remuneration in exchange for any PHI in a manner that would violate Section 13405(d) of the HITECH Act or 45 C.F.R. §164.502(a)(5)(ii). In addition, Business Associate shall not sell PHI or receive any remuneration in exchange for PHI.
6. **Notice of Probes and Reconnaissance Scans.** Notwithstanding Section 3(j) with respect to Security Incidents, the Parties acknowledge that probes and reconnaissance scans are

commonplace in the industry and as such, the Parties acknowledge and agree that, to the extent such probes and reconnaissance scans constitute Security Incidents, this Section 6 constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of such Security Incidents for which no additional notice to Covered Entity shall be required, as long as such probes and reconnaissance scans do not result in unauthorized access, use, or disclosure of PHI. For the purposes of this BAA, probes and reconnaissance scans include, without limitation, pings and other broadcast attacks on Business Associate's firewalls, port scans, and unsuccessful log-on attempts that do not result in unauthorized access, use, or disclosure of PHI.

7. **Term and Termination.**

- (a) **Term.** This BAA shall commence on the Effective Date and end with the termination of the Terms of Use, unless terminated sooner by (i) Covered Entity notifying Business Associate in writing that Covered Entity opts-out of receiving Business Associate's HIPAA-compliant Services or (ii) any other methods in accordance with this Section 7.
- (b) **Termination for Breach.** As provided under 45 C.F.R. §164.504(e)(2)(iii), Covered Entity may immediately terminate the Terms of Use and any related agreements if Covered Entity determines that Business Associate has breached a material term of this BAA after Covered Entity shall have provided Business Associate with written notice of the existence of the breach, stating with particularity the nature of the breach, and shall have provided Business Associate with fifteen (15) calendar days to cure said breach.
- (c) **Termination of Subcontractor.** If Covered Entity determines that a Subcontractor of Business Associate has breached a material term of this BAA, Covered Entity shall provide Business Associate with written notice of the breach, stating with particularity the nature of the breach, and provide Business Associate with fifteen (15) calendar days to require Subcontractor to cure said breach. Nothing contained in this subsection shall diminish the obligation of Business Associate to ensure the compliance of its Subcontractors with the terms of this BAA. Failure by Business Associate to cure a breach or violation by the Subcontractor, in the manner set forth above, shall be grounds for immediate termination of the Terms of Use.
- (d) **Effect of Termination.** Upon termination of the Terms of Use, the Parties acknowledge and agree that the return or destruction of PHI held by Business Associate is infeasible and therefore, Business Associate shall ensure that any and all protections, requirements and restrictions contained in this BAA shall be extended to any PHI retained by Business Associate after the termination of this BAA, and that any further uses and/or disclosures shall be limited to Business Associate's internal purposes (including but not limited to Business Associate's proper management and administration or to carry out its legal responsibilities) and the purposes that make the return or destruction of the PHI infeasible. Business

Associate further agrees to comply with all applicable state and federal laws, which may require a specific period of retention, redaction, or other treatment of such PHI.

8. **Notices.** All notices shall be sent to the Parties at the addresses first written above or to such other addresses as shall be furnished by notice to the other Party in accordance with the provisions of this Section 8. Any and all notices and other communications required or permitted to be given under this BAA shall be given and deemed delivered as follows: (a) if by personal delivery, on the day of the delivery; (b) if by commercial courier, on the date of the delivery confirmation notice; (c) if sent by overnight U.S. express mail, on the date of the delivery confirmation notice; (d) if sent by registered or certified mail, postage prepaid, on the date of the delivery confirmation notice; or (e) if sent by facsimile or e-mail, on the date following confirmation of successful transmission.
9. **Relationship of the Parties.** None of the provisions of this BAA or the Terms of Use are intended to create, nor shall they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this BAA and the Terms of Use evidencing their business relationship. Business Associate is an independent contractor and not an agent of the Covered Entity.
10. **Governing Law; Venue.** This BAA shall be governed by and construed in all respects under the governing law identified in the Terms of Use. All actions commenced to enforce or interpret this BAA shall be brought in the federal and state courts in the governing law state. Neither party may assert or be entitled to relief on a claim of *forum non conveniens* as to a court of competent jurisdiction located in such state and county.
11. **Miscellaneous.** Business Associate and Covered Entity agree to amend this BAA to the extent necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions, the Security Standards, or other relevant state or federal laws or regulations created or amended to protect the privacy of patient information. All such amendments shall be made in a writing signed by both parties. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity to comply with the then most current version of HIPAA and the regulations promulgated thereunder. The provisions of this BAA shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. This BAA may only be assigned as provided in the Terms of Use. The parties agree that the terms of this BAA shall apply only to themselves and are not for the benefit of any third-party beneficiaries. This BAA may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.