

Covered Entity HIPAA Business Associate Agreement

Background

A. Customer acts as a “covered entity” and DigitalOwl acts as a “business associate,” as those terms are defined under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (including the Standards for Privacy of Individually Identifiable Information (“**Privacy Rule**”), Security Standards for the Protection of Electronic Protected Health Information (“**Security Rule**”), and Breach Notification for Unsecured Protected Health Information Final Rule (“**Breach Notification Rule**”), as amended from time to time, including by the Health Information Technology for Economic and Clinical Health Act of 2009 and by the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules (collectively, “**HIPAA**”).

B. DigitalOwl has and/or will have access to create and/or receive certain Protected Health Information in connection with the Services, and the parties desire to enter into this Agreement to memorialize their obligations with respect to such Protected Health Information.

Agreement

In consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the parties agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the same meanings as those terms are given in HIPAA. “**Protected Health Information**” and “**PHI**” shall have the same meaning as the former term is given in HIPAA, and “**Electronic Protected Health Information**” and “**ePHI**” shall have the same meaning as the former term is given in HIPAA, in each case limited to such information created or received by Business Associate in its capacity as Covered Entity’s business associate.

2. Business Associate’s Responsibilities with Respect to Protected Health Information.

(a) *Limits on Use and Disclosure; Minimum Necessary.* Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Business Associate shall make reasonable efforts to use, disclose and request the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request.

(b) *Appropriate Safeguards.* Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this Agreement.

(c) *Incident Reporting.* Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement and any Security Incident of which Business Associate becomes aware. The parties acknowledge and agree that this paragraph constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” means, without limitation, actual or attempted pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

(d) *Breach Notification.* Business Associate agrees to notify Covered Entity of any Breach of Unsecured Protected Health Information within twenty (20) business days after discovery of the Breach (except as provided in 45 C.F.R. § 164.412 with respect to law enforcement delay). The notification required by this paragraph shall include, to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the Breach. Business Associate shall provide Covered Entity, at the time of the notification required by this paragraph or promptly thereafter as information becomes

available, with any other available information that Covered Entity is required to include in notification to the individual under the Breach Notification Rule.

(e) *Subcontractors.* Business Associate will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to Covered Entity, providing that the agent agrees to restrictions and conditions that are no less restrictive than those that apply through this Agreement to Business Associate with respect to such PHI.

(f) *Designated Record Sets – Access.* The parties acknowledge and agree that Business Associate does not currently maintain PHI in a Designated Record Set for Covered Entity. In the event there is a change such that Business Associate commences maintaining PHI in a Designated Record Set for Covered Entity, then Business Associate, at the request of Covered Entity, shall within fifteen (15) calendar days make access to such PHI available to Covered Entity in accordance with 45 C.F.R. § 164.524.

(g) *Designated Record Sets – Amendment.* The parties acknowledge and agree that Business Associate does not currently maintain PHI in a Designated Record Set for Covered Entity. In the event there is a change such that Business Associate commences maintaining PHI in a Designated Record Set for Covered Entity, then Business Associate, at the request of Covered Entity, shall within fifteen (15) calendar days make such PHI available to Covered Entity for amendment and incorporate any reasonably requested amendment to such PHI in accordance with 45 C.F.R. § 164.526.

(h) *Accounting of Disclosures.* Business Associate, at the request of Covered Entity, shall within thirty (30) calendar days make available to Covered Entity such information relating to disclosures made by Business Associate as required for Covered Entity to make any requested accounting of disclosures in accordance with 45 C.F.R. § 164.528.

(i) *Carrying Out Covered Entity's Obligations.* To the extent that Business Associate is engaged to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate agrees to comply with Privacy Rule requirements that apply to Covered Entity in the performance of such obligations.

(j) *Access to Books and Records.* Business Associate shall make available to the Secretary of the U.S. Department of Health and Human Services Business Associate's internal practices, records, and books relating to the use and disclosure of PHI for purposes of determining Covered Entity's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.

3. Permitted Uses and Disclosures of PHI by Business Associate.

(a) *Performance of Services.* Business Associate may use and disclose PHI for, or on behalf of, Covered Entity as specified in the Services Agreement or as otherwise necessary to provide Covered Entity with the Services, provided that any such use or disclosure would not violate HIPAA if done by Covered Entity.

(b) *De-Identification.* Business Associate may use PHI to de-identify PHI in accordance with 45 C.F.R. § 164.514, provided that any such use would not violate HIPAA if done by Covered Entity, and Business Associate may subsequently use and disclose such de-identified data unless prohibited by applicable law.

(c) *Management, Administration and Legal Responsibilities.* Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that any disclosure pursuant to this sub-part may occur only if Business Associate obtains written reasonable assurances from the person to whom PHI is disclosed that (i) such PHI will be held confidentially and used and further disclosed only as Required by Law or for the purpose for which it was disclosed to such person and (ii) such person will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

(d) *Data Aggregation.* Business Associate may use PHI to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(e) *Required by Law.* Business Associate may use and disclose PHI as Required by Law.

4. Covered Entity's Responsibilities with Respect to Protected Health Information. Covered Entity shall promptly (and if practicable, fifteen (15) calendar days prior to the effective date) notify Business Associate of the following, in each case only to the extent that such matter affects or may affect Business Associate use or disclosure of PHI: (a) any limitations in the notice of privacy practices of Covered Entity under 45 C.F.R. § 164.520; (b) any changes in, or revocation of, the permission by an individual to use or disclose their PHI; and (c) any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity (unless permitted by HIPAA for business associates).

5. Miscellaneous.

(a) *Interpretation; Amendment; Waiver.* Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA. References in this Agreement to a particular law means the law as in effect or as amended. The parties agree to take such action, including negotiation of an amendment in good faith, as is necessary, to amend this Agreement from time to time as is necessary for compliance with HIPAA and other applicable law. Any amendment to this Agreement is not effective unless mutually agreed to in writing by both parties. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by a party with respect to a breach of this Agreement by the other party does not constitute a waiver and will not limit such non-breaching party's rights with respect to such breach or any subsequent breaches.

(b) *Governing Law and Jurisdiction.* This agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Except as otherwise set forth herein, any legal suit, action, or proceeding arising out of or related to this agreement or the rights granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(c) *Relationship of the Parties.* DigitalOwl is an independent contractor, and nothing contained in this Agreement will be construed to make DigitalOwl an employee, agent, partner or joint venture of Customer.

(d) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) *Notices.* Any notice required or permitted under this Agreement shall be sent in accordance with the terms of the Services Agreement concerning notices.

The parties have executed this Agreement by their authorized representatives below. This Agreement is in effect as of the Effective Date even if the signatures below are made after that date.