

BUSINESS ASSOCIATE AGREEMENT

Last updated 6/10/2021

To the extent that Covered Entity discloses Protected Health Information to Business Associate (or Business Associate handles Protected Health Information on Covered Entity's behalf) in connection with services or products provided to Covered Entity, or as otherwise required or allowed by the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, codified at 42 U.S.C. §1320d through d-9, as amended, ("HIPAA"), and only to the extent required by law, Covered Entity and Business Associate agree to the following terms and conditions, which are intended to comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and their implementing regulations:

1. General Terms and Conditions

- (a) "BA Agreement" shall mean this HIPAA Business Associate Agreement.
- (b) "Business Associate" shall generally have 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 Nextech Systems LLC.
- (c) "Covered Entity" shall generally have 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 identified on the Purchase Agreement.
- (d) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- (e) "Service Agreement" shall mean the separate agreement(s) between the parties in which Business Associate performs functions or activities on behalf of Covered Entity.
- (f) Other definitions: The following terms used in this BA Agreement shall have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (to the extent such Protected Health Information is received, used, disclosed, accessed or maintained by Business Associate), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other terms shall have the definitions set forth in this BA Agreement.

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this BA Agreement, as Required By Law, or as contemplated by the Service Agreement.
- (b) Business Associate agrees to use appropriate safeguards, including compliance with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information, to

prevent Use or Disclosure of the electronic Protected Health Information other than as permitted by this BA Agreement.

- (c) Business Associate agrees to report to Covered Entity's Privacy Official any Use or Disclosure of Protected Health Information not provided for by this BA Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 C.F.R. §164.410, and any Security Incident of which it becomes aware. For reports of incidents constituting a Breach, the report shall include, to the extent available, 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. Security Incidents that do not result in any unauthorized access, use, disclosure, modification, destruction of information or interference with system operations will be reported in the aggregate upon written request of Covered Entity in a manner and frequency mutually acceptable to the parties. Business Associate hereby reports to Covered Entity that incidents including, but not limited to, ping sweeps or other common network reconnaissance techniques, attempts to log on to a system with an invalid password or username, and denial of service attacks that do not result in a server being taken off line, may occur from time to time will only be reported in the aggregate.
- (d) In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply through this BA Agreement to Business Associate with respect to such information.
- (e) To the extent Business Associate has Protected Health Information in an existing Designated Record Set, and only to the extent required by HIPAA, Business Associate agrees to make available Protected Health Information in a Designated Record Set, to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524. The Parties agree and acknowledge that, while both entities may have to respond to a request pursuant to 45 C.F.R. §164.524(d)(3), it is Covered Entity's responsibility to respond initially to all such requests and, pursuant to this Agreement, to notify Business Associate if Covered Entity has told an individual to contact Business Associate directly.
- (f) Business Associate agrees to make Protected Health Information available for purposes of any amendment(s) to Protected Health Information in its possession contained in a Designated Record Set as agreed to by Covered Entity pursuant to 45 C.F.R. §164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests and to notify Business Associate of any amendment or refusal to amend.
- (g) Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528(b), subject to the exceptions in 45 C.F.R. §164.528(a). The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests. As disclosures must be made for the period six (6) years prior

to the request or such shorter period if requested by an individual, the Parties agree that the responsibility of Business Associate to provide this information shall not extend beyond termination of this or a subsequent BA Agreement.

- (h) To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 of the HIPAA Rules, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- (i) Business Associate agrees to make Protected Health Information of Covered Entity's patients available whenever such patients participate in a third party program requiring access to patient data.
- (j) Business Associate agrees to make its internal practices, books, and records related to Business Associate's use and disclosure of Protected Health Information received from Covered Entity available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate

- (a) Business Associate may use or disclose Protected Health Information as necessary to perform the services set forth in the Service Agreement, as permitted in this BA Agreement and the Service Agreement, and as otherwise permitted by the HIPAA Rules.
- (b) Business Associate may Use or Disclose Protected Health Information as Required By Law.
- (c) Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with the requirements in the HIPAA Rules regarding Minimum Necessary uses and disclosures. Covered Entity represents and warrants that its Minimum Necessary policies and procedures and the Notice of Privacy Practices are consistent with, and not more stringent than, the HIPAA Rules or, to the extent that Covered Entity's Notice of Privacy Practices or policies and procedures regarding the Minimum Necessary requirements of the HIPAA Rules impose additional particular restrictions on Business Associate, Covered Entity agrees to provide such policies to Business Associate in writing prior to requesting that Business Associate perform a particular function or activity on behalf of Covered Entity that would be affected by such policies and procedures.
- (d) Business Associate may create de-identified information that may be used and disclosed by Business Associate as Business Associate deems appropriate, provided that the information is de-identified in accordance with the HIPAA Rules.
- (e) Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity. Business Associate may also use Protected Health Information to create, use and disclose a Limited Data Set consistent with the HIPAA Rules.

- (f) Business Associate may use and disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, in a manner consistent with the HIPAA Rules.
- (g) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
- (h) 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.
- (i) 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 the disclosures are Required By Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes 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.
- (j) Business Associate may disclose Protected Health Information to third parties on a continuing basis at the request of Covered Entity's patients, including where patients have a standing request to Covered Entity to transfer such information or where patients participate in any type of third party program and authorize transmission of their data.

4. Obligations of Covered Entity

- (a) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. §164.520, and its policies regarding the "minimum necessary" requirements in 45 C.F.R. §164.502(b) to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information, and to notify Business Associate of any material changes thereof.
- (b) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information, if such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any restriction on the Use and/or Disclosure of Protected Health Information to which Covered Entity has agreed or is required to abide by under 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 agrees to comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Covered Entity agrees to obtain any patient authorizations or consents that may be required under state or federal law or regulation in order to (i) transmit Protected Health Information to Business Associate; (ii) enable Business Associate and its subcontractors to Use and Disclose Protected Health Information as contemplated by this BA Agreement and the Service Agreement; and (iii) allow Business Associate to transfer patient data to third parties if patients participate in third party programs.
- (e) Covered Entity may not ask Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under applicable laws and rules, including the HIPAA Rules, if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for its proper management and administration, data aggregation, and other activities specifically permitted by this BA Agreement.
- (f) Covered Entity will notify Business Associate within twenty-four (24) hours of directing patients to contact Business Associate directly for access to their data.
- (g) Covered Entity agrees to notify Business Associate within ten (10) business days of any amendment to patient records.
- (h) Covered Entity agrees to notify Business Associate within ten (10) business days of receiving a patient request for an accounting of disclosures and the period covered by such request.

5. **Limitation of Liability**

- (a) Limitation of Liability: IN NO EVENT SHALL NEXTECH BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, 3RD PARTY COST, PRACTICE STAFF TIME COSTS OR ANY OTHER PECUNIARY LOSS), WHETHER FORESEEABLE OR NOT FORESEEABLE AND WHETHER ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY IN TORT OR OTHERWISE, AND WHETHER BASED ON THIS AGREEMENT OR ANY TRANSACTION PERFORMED OR UNDERTAKEN UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- (b) Remedies: THE CUSTOMER AGREES THAT NEXTECH'S TOTAL LIABILITY TO THE CUSTOMER OR ANY THIRD PARTY FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL, IN ANY EVENT, NOT EXCEED THE FEES PAID TO NEXTECH DURING THE PRECEDING TWELVE (12) MONTHS FOR ANY SERVICES PERFORMED IN CONNECTION WITH THE SERVICES AGREEMENT.

- (c) Applicable Law: Notwithstanding the foregoing, this Section 5 will not apply when and to the limited extent that applicable law specifically requires liability despite the foregoing exclusions and limitations.
- (d) Survival. The provisions of this section 5 shall survive termination of this BA Agreement.

6. **Survival and Termination**

(a) Term and Survival

Except as otherwise provided herein, the term of this BA Agreement shall coincide with the Service Agreement and shall be terminable in accordance with the termination provisions of the Service Agreement, or the date either party terminates for cause, as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause

Upon a party's knowledge of a material breach by the other, the non-breaching party shall provide written notice to the breaching party and may terminate this BA Agreement if the breaching party does not cure the breach or end the violation within 30 days of receipt of such notice.

(c) Effect of Termination

- (i) Except as provided below in Subsection 6(c)(ii) of this BA Agreement, upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- (ii) In the event that Business Associate determines that it needs to retain Protected Health Information in order to Use or Disclose Protected Health Information for its own management and administration or to carry out its legal responsibilities, Business Associate may retain such Protected Health Information. Upon termination of this BA Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - 1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - 2. Return or destroy the remaining Protected Health Information that Business Associate still maintains in any form;
 - 3. Continue to use appropriate safeguards to comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as

provided for in this Section, for as long as Business Associate retains the Protected Health Information;

4. Not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Subsections 3(h)-(i) above which applied prior to termination; and
5. Return to Covered Entity or destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- (d) Business Associate's obligations under this Section 6 shall survive the termination of this BA Agreement.

7. Interpretation and Amendment of this BA Agreement

A regulatory reference in this BA Agreement to a section of the HIPAA Rules means the section as in effect or as amended. Any ambiguity or inconsistency in this BA Agreement shall be interpreted to permit compliance with the HIPAA Rules. This BA Agreement supersedes any and all prior representations, understandings, or agreements, written or oral, concerning the subject matter herein, including conflicting provisions of the Service Agreement. The parties hereto agree to negotiate in good faith to amend this BA Agreement from time to time as is necessary for compliance with the requirements of HIPAA or any other applicable law and for Business Associate to provide services to Covered Entity. However, no change, amendment, or modification of this BA Agreement shall be valid unless it is set forth in writing and signed by both parties. When provisions of this BA Agreement are different than those in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this BA Agreement shall control. Any ambiguity in this BA Agreement shall be resolved to permit the parties to comply with the HIPAA Rules.

8. No Third Party Rights/Independent Contractors

The terms and conditions of this BA Agreement are intended for the sole benefit of Business Associate and Covered Entity and do not create any third party rights. The parties declare that they are independent contractors and not agents of each other, except as otherwise required by law or regulation.

9. Access to Books and Records

To the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Parties shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing products and services under this BA Agreement. Such inspection shall be available for up to four (4) years after the provision of such services. If Business Associate carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, Business Associate agrees to include this requirement in any such

subcontract. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the Parties by virtue of this provision.

10. Notices

Any notice required or permitted by this BA Agreement to be given or delivered shall be in writing and shall be deemed given or delivered if delivered in person, or sent by courier or expedited delivery service, or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile (if confirmed), to the address set forth below the Party's signature. Each party may change its address for purposes of this BA Agreement by written notice to the other party.

11. Governing Law

To the extent not preempted by federal law, the BA Agreement shall be governed and construed in accordance with the state laws governing the Service Agreement, without regard to conflicts of law provisions that would require application of the law of another state.

12. Binding Nature and Benefits

This BA Agreement binds and benefits the parties, and their respective successors, and their permitted assigns.

13. Severability

Whenever possible, each provision of this BA Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this BA Agreement should be prohibited or found invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the other of such provision or the remaining provisions of this BA Agreement; provided, however, that if any such invalid provision is material to an extent that a party would not have entered into the BA Agreement absent such provision, then that party may terminate the BA Agreement upon ninety (90) calendar days' prior written notice to the other party.