

Downstream Business Associate Agreement - Contractor

This **BUSINESS ASSOCIATE AGREEMENT** (this “**BAA**”) is made by and between TRACTION SALES AND MARKETING INC. (“Company”) and the other party named in the MASTER CONTRACTOR AGREEMENT (“Contractor”) (each a “Party” and together, the “Parties”) and is effective as of the Effective Date of that Master Contractor Agreement. Capitalized terms used in this BAA without definition shall have the respective meanings assigned to such terms by the Health Insurance Portability and Accountability Act of 1996 as amended and the HITECH Act (P.L. 111-5, Feb. 17, 2009) and their implementing regulations as amended from time to time (collectively “**HIPAA**”).

RECITALS

WHEREAS, Company is a Business Associate of one or more HIPAA Covered Entities that contract with Company (each, a “Covered Entity”);

WHEREAS, pursuant to a separate written agreement (the “Services Agreement”), Company has engaged or may engage the Contractor to provide certain services (the “Services”) involving Protected Health Information (or “PHI”) of one or more Covered Entities;

WHEREAS, Contractor is a Subcontractor of Company and is a Business Associate when Contractor creates, receives, maintains, transmits, uses or discloses (together, “Process”) Protected Health Information on behalf of Company;

WHEREAS, Company is obligated to protect and secure any Protected Health Information it Processes on behalf of the Covered Entities in accordance with HIPAA;

WHEREAS, Contractor is obligated to protect and secure any Protected Health Information it Processes in providing the Services; and

WHEREAS, Company and Contractor agree that this BAA shall govern Contractor’s Processing of Protected Health Information in providing the Services.

NOW THEREFORE, in consideration of the mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Company agree as follows:

I. GENERAL PROVISIONS

Section I.1 Effect. The provisions of this BAA shall control with respect to Protected Health Information that Contractor receives from or on behalf of Company or the Covered Entities, and the terms and provisions of this BAA shall supersede any conflicting or inconsistent terms and

provisions of the Services Agreement, including all exhibits or other attachments thereto and all documents incorporated therein by reference, to the extent of such conflict or inconsistency. This BAA shall not modify or supersede any other provision of the Services Agreement unless expressly stated herein.

Section I.2 No Third Party Beneficiaries. The Parties have not created and do not intend to create by this BAA any third party rights, including, but not limited to, third party rights for Covered Entities' patients.

Section I.3 HIPAA Amendments. Should there be any future amendments to HIPAA affecting Business Associate agreements, the Parties shall, in good faith, discuss amending this BAA to comply with such amendments. If the Parties cannot come to an agreement on such amendments, then upon the request of the Company, Contractor shall immediately stop Processing the PHI.

Section I.4 Regulatory References. A reference in this BAA to a section in HIPAA means the section as it may be amended from time to time.

Section I.5 Independent Contractor Status. The Parties acknowledge and agree that Contractor is at all times acting as an independent contractor of Company and not as an agent or employee of Company under the Services Agreement.

II. OBLIGATIONS OF CONTRACTOR

Section II.1 Use and Disclosure of Protected Health Information. Contractor may Process Protected Health Information as permitted or required under the Services Agreement, this BAA, or as Required by Law, but shall not otherwise Process any Protected Health Information. Contractor shall not and shall ensure that its employees, agents and contractors do not Process Protected Health Information received from Company or the Covered Entities in any manner that would constitute a violation of HIPAA if Processed by Company or the Covered Entities (except as set forth in Sections 2.1(a), (b) and (c) of this BAA). All actions of Contractor's employees, agents and contractors are deemed actions of Contractor. To the extent Contractor carries out any of Company's or the Covered Entities' obligations under HIPAA, Contractor shall comply with the requirements of HIPAA that apply to Company or the Covered Entities (as applicable) in the performance of such obligations. Without limiting the generality of the foregoing, Contractor is permitted to use or disclose Protected Health Information as set forth below:

a. Contractor may Process Protected Health Information internally for Contractor's proper management and administrative services or to carry out its legal responsibilities.

b. Contractor may disclose Protected Health Information to a third party for the Contractor's proper management and administration, provided that (1) the disclosure is Required by Law, (2) Contractor makes the disclosure pursuant to an agreement consistent with Section 2.5 of this BAA or (3) Contractor makes the disclosure pursuant to a written confidentiality agreement under which the third party is required to (i) protect the confidentiality, security and privacy of the Protected Health Information, (ii) only use or disclose the Protected Health Information as Required by Law or for the purpose for which it was disclosed to the third party and (iii) notify

Company of any acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted by the confidentiality agreement.

Section II.2 Safeguards. Contractor shall use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as permitted or required by this BAA. In addition, the Contractor shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic Protected Health Information that Contractor Processes on behalf of Company or the Covered Entities. Contractor shall comply with the HIPAA Security Rule with respect to Electronic Protected Health Information and all other relevant provisions of HIPAA as they relate to Electronic Protected Health Information.

Section II.3 Minimum Necessary Standard. To the extent required by the “minimum necessary” requirements of HIPAA, Contractor shall only Process the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure. Contractor shall comply with the minimum necessary guidance to be issued by the Secretary pursuant to HIPAA and, to the extent practicable, shall not Process any Direct Identifiers (as defined in the limited data set standard of HIPAA).

Section II.4 Mitigation. Contractor shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to Contractor) of a use or disclosure of Protected Health Information by Contractor in violation of this BAA or HIPAA.

Section II.5 Subcontractors. Contractor may not subcontract any services that require it to disclose Protected Health Information that it has received from or created on behalf of Company or the Covered Entities unless authorized in the Services Agreement or this BAA. In the event Contractor is authorized to disclose such Protected Health Information, prior to any such permitted disclosure Contractor shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that Process Protected Health Information. Contractor shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Contractor under this BAA.

Section II.6 Reporting Requirements.

a. Contractor shall, without unreasonable delay, but in no event later than five business days after becoming aware of any Processing of Protected Health Information in violation of this BAA by Contractor, its employees, agents or contractors or by a third party to which Contractor disclosed Protected Health Information (each, an “Unauthorized Use or Disclosure”), report such Unauthorized Use or Disclosure to Company. Contractor will not make any public disclosure including to the media of the foregoing without the approval of Company.

b. Contractor shall, without unreasonable delay, but in no event later than five business days after becoming aware of any Security Incident, report it to Company. Contractor will not make any public disclosure including to the media of the foregoing without the approval of Company.

c. Contractor shall, without unreasonable delay, but in no event later than five business days after discovery of a Breach of Protected Health Information (whether secure or unsecured), report such Breach to Company in accordance with 45 C.F.R. § 164.410. Contractor will not make any public disclosure including to the media of the foregoing without the approval of Company.

Section II.7 Access to Information. Within three business days of a request by Company for access to Protected Health Information about an Individual contained in any Designated Record Set maintained by Contractor, Contractor shall make available to Company such Protected Health Information for so long as Contractor maintains such information in the Designated Record Set. If Contractor receives a request for access to Protected Health Information directly from an Individual, Contractor shall forward such request to Company within two business days.

Section II.8 Availability of Protected Health Information for Amendment. Within three business days of receipt of a request from Company for the amendment of an Individual's Protected Health Information contained in any Designated Record Set maintained by Contractor, Contractor shall provide such information to Company for amendment and incorporate any such amendments in the Protected Health Information (for so long as Contractor maintains such information in the Designated Record Set) as required by 45 C.F.R. §164.526. If Contractor receives a request for amendment to Protected Health Information directly from an Individual, Contractor shall forward such request to Company within five business days.

Section II.9 Accounting of Disclosures. Within five business days of notice by Company to Contractor that it has received a request for an accounting of disclosures of Protected Health Information (other than disclosures to which an exception to the accounting requirement applies), Contractor shall make available to Company such information as is in Contractor's possession and is required for Company and Covered Entity to make the accounting required by 45 C.F.R. §164.528. If Contractor receives a request for an accounting directly from an Individual, Contractor shall forward such request to Company within two business days.

Section II.10 Availability of Books and Records. Contractor shall make its internal practices, books and records relating to the Processing of Protected Health Information available to Company and/or the Secretary for purposes of determining Company's compliance with HIPAA.

Section II.11 Restrictions; Limitations in Notice of Privacy Practices. Contractor shall comply with any reasonable limitation in a Covered Entity's notice of privacy practices to the extent that such limitation may affect Contractor's Processing of Protected Health Information and Contractor is made aware of such limitation. Contractor shall comply with any reasonable restriction on the Processing of Protected Health Information that Company or any Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Contractor's Processing of Protected Health Information.

Section II.12 Indemnification. Contractor shall defend, reimburse, indemnify and hold harmless Company for all costs, expenses (including reasonable attorneys fees), damages and other losses resulting from any of Contractor's breaches of this BAA, Unauthorized Use or Disclosure, Security Incident or Breach of Protected Health Information maintained by Contractor or

Contractor's agent or subcontractor, including, without limitation: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to Individuals or government agencies; credit monitoring for affected Individuals; or other mitigation steps taken by Company to comply with HIPAA or state law. This Section 2.12 shall survive the expiration or earlier termination of this BAA. Contractor may not settle any claim, or otherwise take any action or make any admission that would adversely impact the indemnified parties without Company's prior written approval. Company will have the unrestricted right to participate in the defense of any claim covered by this Section using counsel of its choice.

III. TERM AND TERMINATION

Section III.1 Term. The term of this BAA shall commence on the Effective Date and expire when Contractor has returned or destroyed all Protected Health Information in its possession.

Section III.2 Termination Upon Breach of this Agreement. Any other provision of the Services Agreement notwithstanding, Company may terminate the Services Agreement and this BAA upon 30 days advance written notice to Contractor in the event that Contractor breaches this Agreement and such breach is not cured to the reasonable satisfaction of Company within such 30-day period.

Section III.3 Return or Destruction of Protected Health Information upon Termination. Upon expiration or earlier termination of a Services Agreement, Contractor shall either return or destroy all Protected Health Information received from or on behalf of Company or the Covered Entities or created by Contractor on behalf of Company or the Covered Entities under the Services Agreement that Contractor still maintains in any form. Notwithstanding the foregoing, to the extent that Company and Contractor agree that it is not feasible to return or destroy such Protected Health Information, the terms and provisions of this BAA shall survive termination and such Protected Health Information shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such Protected Health Information.

IV. RIGHTS TO PROTECTED HEALTH INFORMATION

Contractor acknowledges and agrees that neither it nor any of its employees, agents, consultant or assigns will have any rights in any of the PHI or to Process the PHI in any form, including stripped or aggregated information or statistical information derived from or in connection with the PHI, except as expressly permitted in this Agreement.

V. INSURANCE

Contractor will procure and maintain in effect during the term of this BAA: (1) general liability insurance coverage with minimum limits of \$3 million per occurrence and \$3 million aggregate; and (2) professional liability or errors and omissions insurance coverage within minimum limits of \$3 million per occurrence and \$3 million in aggregate, insuring against breaches of this BAA; (3) workers' compensation insurance coverage as required by law and employers liability in an amount not less than \$1 million, and (4) automobile liability insurance in the amount of \$1,000,000, if applicable. Upon request, Contractor shall provide evidence of continuous coverage to Company and no coverage required within this Section V shall be voided or cancelled without prior notice to Company. Company, its subsidiaries and affiliates, and its employees, trustees, directors, officers, subcontractors, agents or other members of its workforce shall be

added as additional insureds on the liability policies required herein on a primary, non-contributory basis. If this agreement is supplemental documentation to a professional services or vendor agreement, then the greater of the insurance types and coverage requirements shall take precedence to this clause.

Last updated October 13, 2021.