

Business Associate Agreement

This Business Associate Agreement ("**Agreement**") is entered into by and between eClinicalWorks®, LLC, a Massachusetts limited liability company ("**eClinicalWorks**"), and _____ ("**Customer**") dated _____ ("**Effective Date**"), and sets forth in writing certain understandings and procedures governing eClinicalWorks's use of protected health information as that term is defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and any regulations adopted under those laws by the United States Department of Health and Human Services and as those regulations may be amended from time to time.

1. Definitions

- a. **Catch-all definition:** The following terms used in this Agreement (whether or not capitalized) shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
- b. **Specific definitions:**
 - i. **eClinicalWorks. "eClinicalWorks"** shall generally have the same role as a "business associate" under 45 C.F.R. § 160.103, and in reference to the party to this Agreement shall refer to the entity defined as eClinicalWorks above.
 - ii. **Customer. "Customer"** 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 Agreement, shall refer to the entity defined as Customer above.
 - iii. **HIPAA Rules. "HIPAA Rules"** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
 - iv. **Successful Security Incident. "Successful Security Incident"** shall mean a security incident that results in the unauthorized access, use, disclosure, modification, or destruction of Protected Health Information.
 - v. **Unsuccessful Security Incident. "Unsuccessful Security Incident"** shall mean a security incident that does not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for example, and not for limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses).

2. Obligations and Activities of eClinicalWorks

- a. eClinicalWorks agrees to:

- i. Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
- ii. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement;
- iii. Report to Customer in writing any use or disclosure of Protected Health Information not permitted under this Agreement of which eClinicalWorks becomes aware, including breaches of Unsecured Protected Health Information as required at 45 C.F.R. § 164.410 and any Successful Security Incident, within thirty (30) days (or sooner if required by applicable state law) of any Breach or Successful Security Incident. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents;
- iv. In making any written report under Section 2(a)(iii) of this Agreement, abide by any reasonable written breach notification procedures actually received by eClinicalWorks from Customer;
- v. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of eClinicalWorks agree to the substantially same restrictions, conditions, and requirements that apply to eClinicalWorks with respect to such information;
- vi. Make available Protected Health Information in a Designated Record Set to Customer as necessary to satisfy Customer's obligations under 45 C.F.R. § 164.524 within thirty (30) business days of receipt of such request. Customer agrees to maintain and properly store a copy of all Protected Health Information used by or disclosed to eClinicalWorks;
- vii. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by Customer pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Customer's obligations under 45 C.F.R. § 164.526;
- viii. Maintain and make available the information required to provide an accounting of disclosures to the Customer as necessary to satisfy Customer's obligations under 45 C.F.R. § 164.528 by providing such information within thirty (30) business days of receipt of such request;
- ix. To the extent eClinicalWorks is to carry out one or more of Customer's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to Customer in the performance of such obligation(s); and
- x. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by eClinicalWorks

- a. eClinicalWorks may use or disclose Protected Health Information as necessary to perform the services set forth in the Agreement or under any other agreement between Customer and eClinicalWorks. eClinicalWorks is also authorized to aggregate data or de-identify the information in accordance with 45 C.F.R. § 164.514(a)–(c). eClinicalWorks may use aggregated data or de-identified information for the purpose of testing or maintaining its software, product improvement, or for any other purpose permitted by law. eClinicalWorks may disclose aggregated data or de-identified information to third party vendors used by Customer for the purpose of providing services to Customer and for the purpose of product improvement.
 - b. eClinicalWorks may use or disclose Protected Health Information as required by law.
 - c. eClinicalWorks agrees to make uses and disclosures and requests for Protected Health Information consistent with Customer’s minimum necessary policies and procedures.
 - d. eClinicalWorks 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 Customer except for the specific uses and disclosures set forth below.
 - e. eClinicalWorks may use or disclose Protected Health Information for its proper management and administration or to carry out the eClinicalWorks’s legal responsibilities.
4. **Provisions for Customer to Inform eClinicalWorks of Privacy Practices and Restrictions**
- a. Customer shall notify eClinicalWorks of any limitation(s) in Customer’s notice of privacy practices under 45 C.F.R. § 164.520, to the extent that such limitation may affect eClinicalWorks’s use or disclosure of Protected Health Information.
 - b. Customer shall notify eClinicalWorks of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect eClinicalWorks’s use or disclosure of Protected Health Information.
 - c. Customer shall notify eClinicalWorks of any restriction on the use or disclosure of Protected Health Information that Customer has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect eClinicalWorks’s use or disclosure of Protected Health Information.
5. **Permissible Requests by Customer**
- a. Customer shall not request eClinicalWorks to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Customer, except that eClinicalWorks may use or disclose Protected Health Information for management and administration and legal responsibilities as described above.
6. **Term and Termination**
- a. **Term.** The Term of this Agreement shall be effective as of the Effective Date, and shall continue according to the terms of the Agreement or on the date Customer terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

- b. **Termination for Cause.** eClinicalWorks authorizes termination of this Agreement by Customer, if Customer determines eClinicalWorks has violated a material term of this Agreement and eClinicalWorks has not cured the breach or ended the violation within thirty (30) business days after written notice from Customer of the violation and associated term of this Agreement.
- c. **Obligations of eClinicalWorks Upon Termination.** Upon termination of this Agreement for any reason, eClinicalWorks, with respect to Protected Health Information received from Customer, or created, maintained, or received by eClinicalWorks on behalf of Customer, shall:
 - i. Retain only that Protected Health Information which is necessary for eClinicalWorks to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Customer or destroy the remaining Protected Health Information that eClinicalWorks still maintains in any form;
 - iii. Continue to use appropriate safeguards and 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 eClinicalWorks retains the Protected Health Information;
 - iv. Not use or disclose the Protected Health Information retained by eClinicalWorks other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 3(e) of this Agreement; and
 - v. Return to Customer or destroy the Protected Health Information retained by eClinicalWorks when it is no longer needed by eClinicalWorks for its proper management and administration or to carry out its legal responsibilities.
 - vi. In the event eClinicalWorks determines that returning or destroying the Protected Health Information is infeasible, eClinicalWorks shall continue to extend the protections to such Protected Health Information as required by the HIPAA Rules and limit further use and disclosure for so long as eClinicalWorks retains such Protected Health Information.
- d. **Survival.** The obligations of eClinicalWorks under this Section shall survive the termination of this Agreement.

7. Miscellaneous

- a. **eClinicalWorks Contact Information.** Please report any incidents involving PHI to privacy@eclinicalworks.com.
- b. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- c. **Amendment.** Customer and eClinicalWorks mutually agree that eClinicalWorks may amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

- d. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- e. **Governing Law.** This Agreement will be governed by the laws of the United States of America and by the laws of the Commonwealth of Massachusetts. The parties irrevocably consent to the exclusive personal jurisdiction of the federal and state courts located in Massachusetts, as applicable, for any matter arising out of or relating to this Agreement without regard to any choice of law principles, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in Massachusetts, such personal jurisdiction will be nonexclusive.
- f. **Execution.** Each representative signing below hereby represents that each is authorized to enter into this Agreement.
- g. **Complete Agreement.** This Agreement constitutes the final, complete and exclusive agreement between the Parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings, whether oral or written. This Agreement may not be amended or modified except by a writing signed by both Parties and identified as an amendment to this Agreement.
- h. **Counterparts.** This Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Each Party hereto consents to be bound by electronic, photocopy or facsimile signatures of such Party's representative hereto.
- i. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
- j. **Relationship.** It is mutually understood and agreed that the relationship between the Parties is that of independent contractors. Neither Party is the agent, employee, or servant of the other. Nothing in this Agreement is intended to create any partnership, joint venture, lease or equity relationship, expressly or by implication between the Parties.
- k. **Notices.** If any notices are required to be sent to the Customer under this Agreement, Customer agrees that such notices may be emailed to the Customer's patient safety officer or other authorized contact.

Contract Execution

IN WITNESS HEREOF, the respective authorized representative of each party has executed this Agreement to be effective as of the Effective Date as set forth above.

Customer
Authorized Signature:
Name:
Customer Title or Position:

eClinicalWorks, LLC
Authorized Signature:
Name:
eClinicalWorks Title or Position: