

## BUSINESS ASSOCIATE AGREEMENT

**THIS AGREEMENT** ("Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (hereinafter referred to as the "Effective Date"), is by and between \_\_\_\_\_ (hereinafter referred to as "Covered Entity") and MIM Software Inc. (hereinafter referred to as "Business Associate").

### RECITALS

**WHEREAS**, Covered Entity (CE) and Business Associate (BA) are parties to one or more agreements and/or may in the future become parties to additional agreements (collectively, the "Underlying Agreements"), pursuant to which BA provides certain services to CE ("Services") and, in connection with such Services, creates, receives, uses or discloses for or on behalf of CE certain individually identifiable Protected Health Information (PHI) relating to patients of CE which is subject to protection under the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act Title XIII of Division A of the American Recovery and Reinvestment Act, 2009 (HITECH Act) and regulations promulgated there under, as such law and regulations may be amended from time to time (collectively, "HIPAA"); and

**WHEREAS**, CE and BA wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a covered entity and its business associate.

**NOW, THEREFORE**, in consideration of the foregoing, CE and BA agree as follows:

#### A. Definitions.

- a. "Breach" has the same meaning as 45 CFR § 164.402; Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act").
- b. "Business Associate" shall have the same meaning as 45 CFR § 160.103.
- c. "Covered Entity" shall have the same meaning as 45 CFR § 160.103.
- d. "Designated Record Set" shall have the same meaning as 45 CFR §164.501.
- e. "Disclosure" shall have the same meaning as 45 CFR § 160.103.
- f. "Electronic PHI" shall have the same meaning as 45 CFR § 160.103.

- g. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended.
- h. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act contained in Public Law 111-005, as codified in the U.S. Code, as amended.
- i. "Individual" shall have the same meaning as 45 CFR §160.103.
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information as CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act.
- k. "Protected Health Information (or "PHI") shall have the same meaning as 45 CFR §160.103 (as amended by the HITECH Act), limited to the information created or received by BA from or on behalf of CE.
- l. "Required by Law" shall have the same meaning as 45 CFR § 164.103 and the HITECH Act Title XIII, Subtitle D.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services.
- n. "Security Incident" shall have the same meaning as 45 CFR § 164.304.
- o. "Security Regulation" shall mean the Standards for Security for the Health Insurance Reform, 45 CFR Parts 160, 162, 164.
- p. "Unsecured PHI" shall mean PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals.

**B. Obligations and Activities of Business Associate.**

1. Uses and Disclosures. BA agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
2. Appropriate Safeguards. BA attests to compliance with: Administrative Safeguards (45 CFR § 164.308); Physical Safeguards (45 CFR § 164.310); Technical Safeguards (45 CFR § 164.312); written policies and procedures (45 CFR § 164.316); and Breach Reporting requirements required by Privacy/Security/HITECH Standards for business associates.
3. Mitigation. BA agrees to mitigate, to the extent possible, any harmful effect that is known to BA of a use or disclosure of PHI held by BA or its Sub-Contractor in violation of the requirements of this Agreement.

4. Reporting. BA agrees to report to CE any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.

5. Breach. If a breach of unsecured PHI occurs at or by BA or its Sub-Contractor, BA must notify CE following the discovery of the breach without unreasonable delay and, in all cases, no later than 60 days from the discovery of the breach. To the extent possible, the BA should provide the CE with the identification of each individual affected by the breach as well as any information required to be provided by the CE in its notification to affected individuals. BA shall comply with all regulations issued by the U.S. Department of Health & Human Services and applicable state agencies regarding breach notification.

6. Access. BA, at the request of CE, shall provide CE (or a designee of CE) access to PHI in a Designated Record Set in a prompt and reasonable manner in order to meet the requirements under 45 CFR § 164.524.

7. Amendments. BA agrees to make any amendments to PHI in a Designated Record Set that the CE directs or agrees to pursuant to 45 CFR § 164.526 at the request of CE or an Individual in a prompt and reasonable manner. Any request by an Individual will be directed to the CE and shall not be in violation of this Agreement or Underlying Agreements by and between the BA and the CE.

8. Access to Books and Records. BA agrees to make available to the Secretary (including official representatives of the Secretary), its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created by, or received by BA on behalf of CE, in a prompt reasonable manner for the determination of the BA's compliance with the Privacy/Security/HITECH Rule.

9. Accounting of Disclosures. BA agrees to document accounting of disclosures of PHI and information related to such disclosures as would be required for CE to respond to a request by an Individual in accordance with 45 CFR § 164.528.

**C. Permitted Uses and Disclosures by Business Associate.**

Except as otherwise limited in the Agreement or Underlying Agreements, BA may use or disclose PHI as follows:

1. On behalf of CE, provided that such use or disclosure would not violate the Privacy/HITECH Rule if done by CE.

2. BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law for the purpose for

which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

3. In accordance with 45 CFR § 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information.

#### **D. Obligations of Covered Entity.**

1. CE shall notify BA of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.

2. CE shall notify BA of any changes in, or revocation of, permission by Individual to use or disclose their PHI to the extent that such changes may affect BA's use or disclosure of PHI.

3. CE shall notify BA of any restrictions to the use or disclosure of PHI that CE has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect BA's use or disclosure of PHI.

4. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by CE. Nothing in this paragraph shall restrict the ability of BA to use or disclose PHI as set forth in paragraph C. 2.

#### **E. Term of Agreement and Termination.**

1. Term of Agreement. This Agreement shall begin on the Effective Date and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

2. Termination for Cause. Upon CE's knowledge of a material breach by BA, CE shall either:

a. Provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement if BA does not cure the breach or end the violation within the time specified by CE;

b. Immediately terminate this Agreement if BA has breached a material term of this Agreement and cure is not possible; or

c. If neither termination nor cures are feasible, CE shall report the violation to the Secretary and any other applicable reporting agencies.

3. Effect of Termination.

a. Except as provided in paragraph E. 3(b) of this section, upon termination of this Agreement for any reason, BA shall return, destroy, or disable access to material PHI received from CE, or created or received by BA on behalf of CE. This provision shall apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of PHI.

b. In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to CE notification of the conditions that make return or destruction of PHI infeasible. BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI.

**F. Miscellaneous Terms.**

1. Modification and Assignment. This Agreement may only be modified through a writing signed by the parties and, thus, no oral modification hereof shall be permitted other than changes in state and federal laws regulating PHI privacy and security. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CE or BA to comply with laws governing the privacy and security of PHI. No modification for new or updated laws or regulations for the security or privacy of PHI need be made in writing, it is the understanding of CE and BA that each will adhere to these new laws or regulations. This Agreement shall not be assignable by CE or BA without the other party's prior written consent. Notwithstanding the above, either party may assign this Agreement to a subsidiary or in connection with a sale of all or substantially all of its assets or stock, provided each assignee or successor party agrees in writing delivered to the non-assigning party to be bound by all terms and conditions of this Agreement.

2. Construction and Severability. This Agreement shall be constructed as broadly as necessary to implement and comply with HIPAA. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA. If any provision of this Agreement is or becomes unenforceable, the remainder of this Agreement shall nevertheless remain binding to the fullest extent possible, taking into consideration the purpose of this Agreement.

3. Waivers. This Agreement may only be waived, if such waiver is in writing, specifically references this Agreement and is executed by the party to be bound. The waiver by either party of a breach of any provision of this Agreement does not operate as a waiver of any other breach. A party's failure or delay to exercise any right hereunder does not operate as a waiver of such right or provision of this Agreement.

4. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Ohio without regard to its choice of laws or principles.

5. Notice. Any written notice required under this Agreement shall be given to:

Covered Entity:

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Business Associate:

MIM Software Inc.

25800 Science Park Drive, Suite 180

Cleveland, OH 44122

Attn: Legal Services

**[Signature page to follow]**

IN WITNESS WHEREOF, the CE and BA have caused this Agreement to be signed and delivered by their duly authorized representatives.

MIM SOFTWARE INC.

"COVERED ENTITY"

\_\_\_\_\_

Andrew Nelson, CEO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_