

NDD MEDICAL TECHNOLOGIES INC. BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is an addendum to the nddCloud Subscription Agreement (the “**Subscription Agreement**”) and made and entered into as of the effective date of the Subscription Agreement (the “**Effective Date**”) by and between the Client named in the Subscription Agreement (the “**Covered Entity**”) and ndd Medical Technologies Inc. (“**Business Associate**”).

CLIENT REPRESENTS AND WARRANTS THAT: (I) CLIENT HAS FULL LEGAL AUTHORITY TO ENTER INTO THIS BAA, (II) CLIENT HAS READ AND UNDERSTANDS THIS BAA, AND (III) CLIENT AGREES TO THE TERMS OF THIS BAA.

RECITALS

WHEREAS, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, as amended by the American Recovery and Reinvestment Act of 2009, Public Law No. 111-005, Part I, Title XIII, Subpart D, Sections 13401-13409, (the “**HITECH Act**”), (collectively, “**HIPAA**”) provides that Covered Entity comply with standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, the Department of Health and Human Services has issued regulations under HIPAA (the “**HIPAA Regulations**”), including the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, sub-parts A and E, as amended by the HITECH Act (the “**Privacy Rule**”) and the Standards for Security of Electronic Protected Health Information, 45 CFR Parts 160, 162 and 164, as amended by the HITECH Act (the “**Security Rule**”) (collectively, the “**Privacy and Security Rules**”); and

WHEREAS, Sections 164.502(e) and 164.504(e) of the Privacy and Security Rules set forth standards and requirements for Covered Entity to enter into written agreements with certain business associates that will have access to Covered Entity's Protected Health Information (as defined below); and

WHEREAS, Business Associate will provide services to Covered Entity pursuant to the **Subscription Agreement**.

NOW THEREFORE, in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS

- a. “Breach” shall have the meaning given to such term in 45 CFR Section 164.402.
- b. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule at 45 CFR Section 164.501.
- c. “Electronic Protected Health Information” or “Electronic PHI” shall mean Protected Health Information which is transmitted by or maintained in Electronic Media (as defined in the Privacy and Security Rules), and for purposes of this BAA, shall be limited to the information Business Associate received from or created, maintained, transmitted or received on behalf of Covered Entity.
- d. “Individual” shall have the meaning given to such term under the Privacy and Security Rules at 45 CFR Section 164.103.
- e. “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy and Security Rules at 45 CFR Section 164.103, limited to the information maintained, created or received by Business Associate from or on behalf of Covered Entity. “Protected Health Information” includes, without limitation, “Electronic Protected Health Information.” PHI shall include qualifying information received from the Covered Entity or from patients of the Covered Entity, either directly or through authorized medical professionals or other agents.
- f. “Required by Law” shall have the meaning given to such term under the Privacy and Security Rules at 45 CFR Section 164.103.

- g. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- h. “Security Incident” shall have the meaning given to such term under the Security Rule at 45 CFR Section 164.304.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

Business Associate agrees not to use or further disclose PHI received or created by Business Associate (or its agents and subcontractors) other than as permitted or required by this BAA or the Subscription Agreement, or as otherwise Required By Law. In connection with the foregoing and except as otherwise limited in this BAA, Business Associate may:

- a. disclose PHI to the Covered Entity;
- b. use or disclose PHI received or created by Business Associate to perform functions, activities or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity;
- c. disclose PHI received or created by Business Associate to other third-party services providers of Covered Entity, as directed by Covered Entity, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity;
- d. use PHI received or created by Business Associate for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- e. disclose PHI received or created by Business Associate for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- f. use PHI to create anonymized data sets that have irreversibly removed the link between the individual and his or her medical information, in compliance with the de-identification requirements of HIPAA and the HIPAA Regulations (“**De-Identified Data**”). Business Associate may use De-Identified Data for purposes not in violation of HIPAA, other applicable law, this BAA or Business Associate’s Privacy Policy; and
- g. inform the Covered Entity of other services and features available or advisable for the Covered Entity.

3. **RESPONSIBILITIES OF BUSINESS ASSOCIATE**

- a. Appropriate Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, as required by the Security Rule.
- b. Reporting of Improper Use or Disclosure. Business Associate shall report to Covered Entity, as soon as reasonably practicable, any use or disclosure of PHI not provided for by this BAA of which it becomes aware, including breaches of Unsecured Protected Health Information (as defined in the Privacy and Security Rules). Knowledge of any improper use or disclosure by an agent or subcontractor of Business Associate shall not be imputed to Business Associate unless and until such agent or subcontractor shall have reported such improper use or disclosure to the Business Associate representative responsible for the Covered Entity engagement. With respect to Electronic PHI, Business Associate shall, as soon as reasonably practicable, report to Covered Entity any Security Incident. The parties acknowledge and agree that this Section 3.b. constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined herein) for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” shall include,

but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

- c. Business Associate's Agents. Business Associate shall ensure that any agent, including a subcontractor to whom it provides any PHI received from Covered Entity, agrees to the same or stricter restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI.
- d. Access to PHI. To the extent that Business Associate maintains PHI in a Designated Record Set, and to the extent that Business Associate maintains the key or has the ability to decrypt the PHI in a Designated Record Set, Business Associate shall make such information available to the Covered Entity, and in the time and manner reasonably designated by Covered Entity, to Covered Entity in order to meet the requirements under 45 CFR Section 164.524.
- e. Amendment of PHI. To the extent that Business Associate maintains PHI in a Designated Record Set, and to the extent that Business Associate maintains the key or has the ability to decrypt the PHI in a Designated Record Set, Business Associate shall make functionality available to the Covered Entity to allow the Covered Entity to make any amendment(s) to such information pursuant to 45 CFR Section 164.526.
- f. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- g. Accounting of Disclosures. Business Associate agrees to provide to Covered Entity, in the reasonable time and manner designated by Covered Entity, information collected in accordance with Section 4(f) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- h. Governmental Access to Records. Business Associate shall make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.

4. **RESPONSIBILITIES OF COVERED ENTITY**

In addition to any other obligations set forth in this BAA, Covered Entity shall:

- a. identify which of the records it furnishes to Business Associate it considers to be PHI for purposes of this BAA, unless it is reasonably apparent to Business Associate when a furnished record is PHI;
- b. provide to Business Associate only the minimum PHI necessary to accomplish the services under the Subscription Agreement;
- c. implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, as required by the Security Rule;
- d. notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI;
- e. notify Business Associate of any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restrictions may affect Business Associate's use or disclosure of PHI; and
- f. obtain any consent or authorization (including consents of Individuals who are patients or clients of the Covered Entity) that may be required by applicable or federal or state laws and regulations prior to furnishing PHI to Business Associate.

5. **TERM AND TERMINATION**

- a. Term. This BAA will commence on the Effective Date and will terminate upon expiration or termination of all contracts, agreements or arrangements governing the services provided by Business Associate to which this BAA applies, unless terminated earlier by written notice by either Party.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this BAA, Covered Entity shall either (i) provide an opportunity for Business Associate to cure the breach or end the violation within the time specified by Covered Entity, or (ii) immediately terminate this BAA if cure is not possible.
- c. Effect of Termination.
 - i. Except as provided in paragraph (ii) of this Section 5(c), upon termination of this BAA for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity (other than De-Identified Data) and shall retain no copies of the PHI.
 - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If Business Associate determines that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA 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 Business Associate maintains such PHI.

6. **REGULATORY REFERENCES**

A reference in this BAA to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

7. **AMENDMENT**

This BAA may only be amended, modified, or its provisions waived by a written instrument executed by both parties. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and HIPAA.

8. **NO AGENCY RELATIONSHIP**

The parties agree that each individual party shall maintain its own independent HIPAA and HITECH Act compliance obligations. The parties will be providing their services as separate legal entities and independent contractors. The parties expressly agree that no agency relationship is created by this BAA with regard to the individual parties' HIPAA obligations. Each party certifies that (1) Covered Entity shall not have the right or authority to control Business Associate's conduct in the performance of services or in the performance of HIPAA obligations; (2) Covered Entity shall not have the authority to direct the daily performance of services by Business Associate; and (3) Covered Entity shall not have the right to give interim instruction to Business Associate regarding the performance of services.

9. **SURVIVAL**

The respective rights and obligations of Business Associate under Section 5(c) of this BAA shall survive the termination of this BAA.

10. **NO THIRD PARTY BENEFICIARIES**

Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

11. **INTERPRETATION AND GOVERNANCE**

Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules. This BAA shall be governed by and subject to the terms and conditions of the Subscription Agreement. In the event of any conflict or inconsistency between this BAA and the Subscription Agreement, this BAA shall govern.