

## **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) is made and entered into by and between the customer entity signing the Services Agreement as defined herein (the “Covered Entity”) and Verizon (the “Business Associate”), as of the date such Services Agreement is fully executed with respect to BlueJeans Telehealth.**

**WHEREAS,** Business Associate will provide **BlueJeans Telehealth** to Covered Entity (the “Services”) as set forth more fully in the **BlueJeans Telehealth + Service Attachment or Order Form** between Covered Entity and Business Associate (the “Services Agreement”);

**WHEREAS,** Covered Entity and Business Associate are required to meet the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the “Act”), the privacy standards adopted by the U.S. Department of Health and Human Services (“HHS”) as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the “Privacy Rule”), the security standards adopted by HHS as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subpart C (the “Security Rule”), and the applicable provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of Pub. L. 111-5, and its implementing regulations (the “HITECH Act”), due to their status as a “Covered Entity” or a “Business Associate” under the Act. (The Act, the Privacy Rule, the Security Rule, and the HITECH Act are collectively referred to as “HIPAA” for the purposes of this Agreement.);

**WHEREAS,** in order to provide the Services under the Services Agreement, Business Associate may create, receive, maintain, or transmit certain Protected Health Information (“PHI”) on behalf of Covered Entity; and

**WHEREAS,** the parties desire to enter into this Agreement in order (i) to protect the privacy and provide for the security of PHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity; and (ii) to satisfy certain requirements imposed upon the parties by HIPAA.

**NOW, THEREFORE,** in consideration of the mutual benefits of complying with laws and regulations stated above, Covered Entity and Business Associate agree as follows:

### **ARTICLE I DEFINITIONS**

**I.1** **“Protected Health Information”** (“PHI”) shall have the same meaning as the term “Protected Health Information” set forth at 45 C.F.R. § 160.103, limited to the information received from, or created, received, maintained, or transmitted by Business Associate on behalf of, Covered Entity.

**I.2** **Other Terms.** All other terms not specifically defined in this Agreement shall have the meanings attributed to them under HIPAA.

**ARTICLE II**  
**PRIVACY AND SECURITY OF PHI**

**II.1 Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, Business Associate may receive, use or disclose PHI on behalf of, or to provide services to, Covered Entity pursuant to the Services Agreement, if such receipt, use or disclosure of PHI would not violate HIPAA if done by the Covered Entity.

(b) Business Associate shall not use or disclose PHI other than as permitted or required by the terms of this Agreement or as required by law.

(c) Business Associate may use and disclose PHI for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities, provided that with respect to any such disclosures:

(i) The disclosure is required by law; or

(ii) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be kept confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and 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 as required under 45 C.F.R. 164.504(e)(4).

(d) Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.

(e) To the extent Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate agrees it shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation(s). Covered Entity shall notify Business Associate if any of the Services require Business Associate to carry out one or more of the Covered Entity's obligations under the Privacy Rule.

**II.2 Authorized Use of De-identified Information.** In addition to those uses described in Section 2.1 above, Business Associate may de-identify any and all PHI received or created by Business Associate under this Agreement, which de-identified information shall not be subject to this Agreement and may be used and disclosed on Business Associate's own behalf, all in accordance with the de-identification requirements of the Privacy Rule. Business Associate may aggregate, manipulate, use, disclose, sell, publish and distribute such de-identified health information and data provided that such de-identification is in accordance with HIPAA.

**II.3 Safeguards for the Protection of PHI.** Business Associate shall use appropriate safeguards, and comply with the applicable requirements of the Security Rule with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.

#### **II.4 Reporting of Unauthorized Uses or Disclosures of PHI and Breaches of Unsecured PHI.**

(a) Business Associate shall report within a commercially reasonable time to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware.

(b) Business Associate shall report within a commercially reasonable time to Covered Entity any successful security incident of which Business Associate becomes aware. For the purposes of this Agreement, a “successful security incident” is the successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system. Within thirty (30) calendar days of Covered Entity’s request, which shall be made no more frequently than once every twelve (12) months, Business Associate shall provide to Covered Entity a summary report regarding attempted but unsuccessful security incidents of which Business Associate has become aware.

(c) Business Associate shall notify Covered Entity of a Breach of unsecured PHI within thirty (30) calendar days after discovery of such Breach and in accordance with the content requirements of 45 C.F.R. § 164.410, if known to Business Associate.

(d) Business Associate shall have no obligation to correct or mitigate any unauthorized use or disclosure of PHI by Covered Entity and the burden of retrieval or destruction of PHI in the event of any such unauthorized use or disclosure shall rest entirely with Covered Entity.

**II.5 Use of Subcontractors.** In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to the extent that Business Associate uses one or more subcontractors to perform its obligations under any agreement with Covered Entity, and such subcontractors create, receive, maintain, or transmit PHI on behalf of Business Associate, Business Associate shall ensure that any such subcontractors agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI under this Agreement, including the requirement to protect electronic PHI in accordance with the applicable requirements of the Security Rule.

**II.6 Authorized Access to PHI.** In accordance with 45 C.F.R. § 164.524, and to the extent that Business Associate or its subcontractors maintain PHI in a Designated Record Set on Covered Entity’s behalf, Business Associate shall make such PHI available to Covered Entity within fifteen (15) calendar days of a request by Covered Entity, within normal business hours, including making PHI available for Covered Entity to send a copy to a designated third party and/or provide or send a copy in electronic format, all at Covered Entity’s expense. If an Individual requests access to PHI directly from Business Associate or its subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) business days of Business Associate’s receipt of such request, and, if the request is in writing, shall provide Covered Entity with a copy of the request.

**II.7 Amendment to PHI.** In accordance with 45 C.F.R. § 164.526, and to the extent that Business Associate or its subcontractors maintain PHI in a Designated Record Set on Covered Entity’s behalf, Business Associate shall make such PHI available for amendment and incorporate any amendments to such PHI in accordance with Covered Entity’s written request within thirty

(30) calendar days of such request by Covered Entity, at Covered Entity's expense. If an Individual requests amendment of PHI directly from Business Associate or its subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) business days of Business Associate's receipt of such request, and, if the request is in writing, shall provide Covered Entity with a copy of the request.

**II.8 Accounting of Disclosures of PHI.** Business Associate shall document, and within thirty (30) calendar days of receiving a written request from Covered Entity, make available to Covered Entity information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual, in accordance with 45 C.F.R. § 164.528.

**II.9 Obligations of Covered Entity.**

(a) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose such Individual's PHI to the extent that such change or revocation may affect Business Associate's use or disclosure of PHI or its ability to perform its obligations under any applicable agreement with Covered Entity or the law. Covered Entity shall also obtain, in writing, any Individual consent, authorization, and other permissions that may be necessary or required by applicable laws in order to transfer or disclose the PHI to Business Associate.

(d) Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

**ARTICLE III  
TERM AND TERMINATION**

**III.1 Term.** The term of this Agreement shall commence as of the Effective Date and shall continue in effect until terminated in accordance with Section 3.2.

**III.2 Termination.**

(a) This Agreement shall terminate automatically upon the termination or expiration of the Services Agreement.

(b) Upon either party's knowledge of a breach of a material term of this Agreement by the other party, the non-breaching party shall provide the breaching party with written notice of such breach. If such breach is not cured to the reasonable satisfaction of the non-breaching party within thirty (30) days of the breaching party's receipt of written notice of the breach, the non-breaching party may terminate this Agreement and the Services Agreement. Any

such termination of this Agreement by Business Associate shall be subject to the obligation of Covered Entity to pay all amounts due to Business Associate in the event of termination as described in the Services Agreement.

(c) Upon termination of the Agreement for any reason, Business Associate shall, if feasible, return or destroy all PHI or any copies thereof received from Covered Entity that Business Associate or its subcontractors still maintain in any form. If return or destruction is infeasible, Business Associate or its subcontractors shall continue to extend the protections of this Agreement to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

(d) The obligations of the parties under this Section 3.2, the obligations of Business Associate under Section 2.1 and the obligations of Covered Entity under Section 2.9 shall survive termination of this Agreement. All other provisions of this Agreement shall survive termination of this Agreement to the extent necessary to give effect to such terms.

#### **ARTICLE IV MISCELLANEOUS**

**IV.1 Applicability.** This Agreement shall be applicable only to PHI received by Business Associate from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity in connection with Business Associate's performance, and Covered Entity's permitted receipt or use, of the Services. Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, the parties agree and acknowledge that this Agreement shall apply only to the extent that Business Associate is a business associate as defined by HIPAA.

**IV.2 Amendments.** If any modification to this Agreement is required for conformity with any law, regulation, court decision and/or any interpretive guidance or policy, either party shall notify the other of such proposed modification(s) ("Required Modifications"). The parties agree that such Required Modifications shall be mutually agreed to by the parties in writing and will be made in accordance with the Change Order provision of the Services Agreement.

**IV.3 Non-Performance by Covered Entity.**

(a) Business Associate shall be excused from its failure to perform its responsibilities under the Services Agreement and this Agreement if its responsibilities are dependent upon Covered Entity's performance and Covered Entity (or its contractor or agent) does not perform its obligations under this Agreement.

(b) In the event that Business Associate is impeded from the provision of **BlueJeans Telehealth** as a result of Covered Entity's failure to perform, Covered Entity shall remain obligated to pay Business Associate for **BlueJeans Telehealth** as agreed upon in the Services Agreement.

**IV.4 Compliance with Other Laws.** Business Associate has the right to determine its own compliance with any and all laws applicable to Business Associate. Business Associate shall

not be in breach of this Agreement if Business Associate refuses to act on a request by Covered Entity that Business Associate reasonably believes violates an applicable law.

**IV.5 No Third Party Beneficiaries.** Nothing express or implied in this Agreement 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.

**IV.6 Independent Contractors.** Business Associate and Covered Entity are and shall remain independent contractors throughout the term. Nothing in this Agreement shall be construed to constitute Business Associate and Covered Entity as partners, joint venturers, agents or anything other than independent contractors.

**IV.7 Conflicts.** All terms of the Services Agreement between the parties shall remain in full force and effect, except the terms and conditions of this Agreement related to HIPAA override and control any conflicting term or condition of any other agreements which are in place between the parties. All non-conflicting terms and conditions of this Agreement and any other agreement between the parties remain in full force and effect.

**IV.8 Construction.** This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with HIPAA.

**IV.9 Audit Rights.** Business Associate shall make its practices, books and records related to PHI available to HHS for the purpose of determining Covered Entity's compliance with HIPAA.